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Funding Assistance to Connecticut Municipalities and State Agencies for Planning, Design and Construction of Pollution Abatement Facilities

Sec. 22a-439-1. Introduction and priority management system

(a) **Purpose and Limitations**

These regulations are set forth to describe the manner and procedures by which state funding assistance shall be made available to and utilized by Connecticut municipalities to plan, design and construct water pollution abatement facilities pursuant to Section 22a-439 of the General Statutes. Any municipality which receives federal grant assistance under the Federal Clean Water Act, as amended, and a state matching grant shall be governed by applicable federal regulations only.

(b) **Definitions**

"Act" means the Federal Clean Water Act (33 U.S.C. 1251 et seq., as amended).

"Ad valorem tax" means a tax based upon the value of real property.

"Applicant" means a municipality as defined in Section 22a-423.

"Architectural or engineering services" means consultation, investigations, reporting and design services offered within the scope of the practice of architecture or professional engineering as defined by the laws of the State of Connecticut.

"Building" means the erection, acquisition, alteration, remodeling, improvement or extension of pollution abatement facilities.

"Collector sewer" means the common lateral sewers, within a publicly owned sewer system, which are primarily installed to receive wastewaters directly from facilities which convey wastewaters from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(A) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers and

(B) Pumping units and pressurized lines serving individual structures or groups of structures when such units are cost-effective and are owned and maintained by the municipality.

(C) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with alternatives to conventional pollution abatement facilities in small communities.

"Combined sewer" means a sewer that is designed as a sanitary sewer and a storm sewer.

"Compatible industrial wastewater" means wastewater that is produced by an industrial user, has a pollutant strength and other characteristics similar to those of domestic wastewater, and can be efficiently and effectively transported and treated with domestic wastewater.

"Complete waste treatment system" means a complete waste treatment system that consists of all the pollution abatement facilities necessary to meet the requirements of Title III of the Act, involving the transport of wastewater from individual homes or buildings to a plant or facility where treatment of the wastewater is accomplished; the treatment of the wastewater to remove pollutants; and the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

"Construction" means the erection, building, acquisition, alteration, remodeling, improvement or extension of pollution abatement facilities or the inspection and supervision of any of the foregoing items.

"Cost Analysis" means the review and evaluation of each element of subagreement cost to determine reasonableness, allocability and allowability.

"Design" means studies, surveys, plans, working drawings, specifications, procedures, field testing of innovative and alternative wastewater treatment processes and techniques (excluding operation and maintenance) requisite for the construction of pollution abatement facilities.

"Excessive infiltration/inflow" means the quantity of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Grantee" means a municipality as defined in Section 22a-423.

"Individual systems" means privately owned alternative pollution abatement facilities (including dual waterless/gray water systems) serving one or more principal residences or small commercial establishments. Normally these are onsite systems with localized treatment and disposal of wastewater, but may include systems serving a cluster of principal residences or small commercial establishments.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to: roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

"Initiation of operation" means the date specified by the municipality on which use of the project begins for the purpose that it was planned, designed and built.

"Interceptor sewer" means a sewer which is designed for one or more of the following purposes:

(A) To intercept wastewater from collector sewers and convey such wastes directly to a treatment facility or another interceptor.

(B) To replace an existing pollution abatement facility and transport the waste to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(C) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(D) To intercept an existing discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a pollution abatement facility.

"Municipality" is as defined in Section 22a-423.

"Nonexcessive infiltration" means the quantity of wastewater flow which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

"Nonexcessive inflow" means the rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the pollution abatement facility during storm events. These problems may include surcharging, backups, bypasses, and overflows.

"Operation and maintenance" means activities required to assure the dependable and economical function of pollution abatement facilities.

(A) Maintenance: Preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment as needed during the useful life of the facility.

(B) Operation: Control of the unit processes and equipment which make up the pollution abatement facility. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"Pollution abatement facility" is as defined in Section 22a-423 and is synonymous with the terms project, treatment works, treatment system, and treatment facility.

"Pollution abatement facility phase or segment" means any portion of a complete pollution abatement facility described in an approved engineering report which can be identified as a contract or discrete sub-item or subcontract. Completion of building of a pollution abatement facility phase or segment may, but need not in and of itself, result in an operable pollution abatement facility.

"Planning" means all necessary engineering reports and studies to determine the feasibility of pollution abatement facilities including pertinent engineering, architectural, legal, fiscal and economic investigations prior to design.

"Project performance standards" means the performance and operations requirements applicable to a project including the enforceable requirements of the Act and the specifications which the project is planned and designed to meet.

"Price analysis" means the process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed subagreement price based on adequate price competition, previous experience with similar work, established catalog or market price law, or regulation.

"Principal residence" means the habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.

"Profit" means the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price.

"Project schedule" means a timetable specifying the dates of key project events including public notices of proposed procurement actions, subagreement awards, issuance of notice to proceed with building, key milestones in the building, initiation of operation and completion of the project.

"Replacement" means expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the pollution abatement facility to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

"Sanitary sewer" means a conduit intended to carry liquid and watercarried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

"Services" means a contractor's labor, time or efforts which do not involve the delivery of a specific end item, other than documents which may result from the contractor's labor, time or efforts (e.g., reports, design drawings, specifications). This term does not include employment agreements or collective bargaining agreements.

"Small commercial establishments" means for purposes of the provisions contained in these regulations providing funding for privately owned individual systems, private commercial establishments such as: restaurants, hotels, stores, filling stations, or recreational facilities; or private, non-profit entities such as: churches, schools, hospitals, or charitable organizations having dry weather wastewater flows of less than 25,000 gallons per day.

"Small community" means for purposes of the provisions contained in these regulations providing funding for small community systems, any municipality with a population of 5,000 or less, or highly dispersed sections of large municipalities, as determined by the Commissioner.

"Storm sewer" means a sewer designed to carry only storm waters, surface runoff, street wash waters and drainage.

"Subagreement" means a written agreement between a grant recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, equipment, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants and purchase orders.

"Useful life" means the period during which a pollution abatement facility will be operated.

"User charge" means a charge levied on users of a pollution abatement facility, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such facility.

"Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

(c) **Development and Format of Project Priority List**

(1) Priority List Format

(A) The Commissioner shall make funding assistance available for projects on a state priority list as established under this section for such periods as authorized by the Legislature under Chapter 446k.

(B) The Commissioner shall prepare an ordered priority listing of projects for which state grant assistance shall be made available for the period effective October 1st to the following September 30th corresponding to the federal fiscal year.

(C) The priority list shall contain two portions: (i) a fundable portion consisting of those highest priority projects ready for construction and anticipated to be funded within the current federal fiscal year, and (ii) a planning portion consisting of those projects that may be funded from future authorized allotments. The priority list shall contain two parts; one for municipally owned pollution abatement projects and the second for state owned projects.

(d) **State Priority System and Project Priority List**

(1) Priority Rating Criteria

All projects eligible for funding assistance shall be evaluated and assigned a priority rating in accordance with the criteria set forth below and will appear on the project priority list. The Commissioner may determine that large-scale, multi-phase projects be segregated and rated separately. Each project shall be evaluated and given points as applicable for each of the following rating criteria, the sum of which shall determine its priority number. These criteria are consistent with the rating system used to establish Federal construction grant project priorities and are shown in the following table:

Priority Rating Point System

I. Benefit of project upon adversely impacted potable water supplies. (10 points maximum)

A. Impaired water supply affecting less than 25 people — 2 points.

B. Impaired water supply affecting 26 to 100 people — 4 points.
C. Impaired water supply affecting 101 to 1,000 people — 6 points.
D. Impaired water supply affecting 1,001 to 5,000 people — 8 points.
E. Impaired water supply affecting more than 5,000 people — 10 points.
II. Benefit of project toward attainment of designated water quality standards and goals. (28 points maximum)
A. Project is necessary for attainment of water quality standards where the impacted water resource is:
1. Smaller than main stem of a sub-regional drainage basin or groundwater goals will be attained — 5 points.
2. Main stem of sub-regional drainage basin — 10 points.
3. Main stem of regional drainage basin — 15 points.
4. Main stem of major drainage basin — 20 points.
5. Projects which impact coastal areas are considered the equivalent of a regional drainage basin and assigned 15 points.
For the purposes of this subsection, the above drainage basin designations are defined on the map entitled "Natural Drainage Basins in Connecticut: 1981" prepared by the Natural Resources Center of the Department of Environmental Protection in cooperation with the United States Geological Services.
B. Project will enable impacted waters to meet minimum dissolved oxygen standards — 8 points.
III. Project will enhance specific water resource values. (24 points maximum)
A. Fishery resources — (6 points maximum).
1. Project will improve recreational fisheries — 3 points.
2. Project will improve anadromous fisheries — 6 points.
3. Project will open new streams for fish stocking programs — 6 points.
B. Shellfish resources — (6 points maximum).
1. Project will lower coliform bacteria levels in the waters of shellfish beds 3 points.
2. Project will open new areas for shellfishing — 6 points.
C. Swimming (6 points maximum).
1. Project will enhance existing swimming opportunities — 3 points.
2. Project will allow for new swimming opportunities — 6 points.
D. Eutrophication — (6 points maximum).
1. Project will reduce eutrophication of a lake or impoundment by diverting septic system discharges out of a drainage basin — 3 points.
2. Project will reduce eutrophication of a lake or impoundment by providing nutrient removal in a municipal treatment plant or by relocating an existing treatment plant discharge — 6 points.
IV. Population equivalent (including commercial and industrial waste) initially served by the project. (12 points maximum)
A. Less than 5000 — 2 points.
B. 5,000 but less than 10,000 — 4 points.
C. 10,000 but less than 20,000 — 6 points.
D. 20,000 but less than 40,000 — 8 points.
E. 40,000 but less than 75,000 — 10 points.
F. 75,000 or greater — 12 points
V. Health and Sanitation Impacts. (6 points)
Project will eliminate ponding of sewage from failing septic systems, backup of sewage into basements, or overflow of sewage in streets (combined sewer overflow correction projects are not eligible for points).

VI. Miscellaneous. (20 points maximum)

A. Project involves the upgrading of an existing primary facility in order to comply with secondary treatment standards — 5 points.

B. Project that will result in Commissioner rescinding an Order concerning a sewer connection moratorium — 5 points.

C. Project will eliminate nuisance odors associated with treatment processes or pump stations but exclusive of large-scale expansion or upgrading of pollution abatement facilities — 5 points.

D. Remedial action will improve treatment plant operations where treatment standards are already being achieved — 5 points.

(NOTE: In cases where the priority rating or score is the same for two or more projects, the order is determined by highest score assigned cumulatively in criteria II (total), III (total), and IV. If a tie still remains, preference will be given to those projects ready to proceed at the earliest date within the limit of funds available.)

(2) Project Ranking Mechanism

The relative position or rank of a project on the priority list for funding will be determined by its priority number and its readiness to proceed to construction during the funding year under consideration. The Commissioner may choose to assign a higher rank for projects which fall into one of the following categories:

(A) *Category I* — Consists of projects for which a construction grant application was submitted for review during the previous funding period and which were on the fundable portion of that year's priority list. These applications have undergone preliminary review, are essentially complete and represent the good faith efforts of municipalities to comply with grant program requirements. Only those projects from the fundable portion of the previous year's priority list can be placed in this category.

(B) *Category II* — Consists of projects where previously funded segments of pollution abatement facilities have been built and are not usable or are severely restricted in use until the downstream project(s) are fully constructed and operational. This category enables these projects to be highly ranked for construction and thus allow full use of all facilities.

(C) *Category III* — Consists of projects which remedy documented pollution of potable water supplies. In order to qualify for high ranking for funding within this special category, projects must meet the following basic criteria: 1. the scope of the pollution problem is significant; 2. the affected water supply is not potable, i.e. does not meet minimum drinking water standards and requires treatment beyond chlorination; and 3. pollution abatement facilities are the cost-effective solution to the problem. This category does not apply to potential emergency use of class B waters for potable water supply as defined in the Connecticut Water Quality Standards adopted pursuant to Section 22a-426.

(3) Order of Funding Priority

The Commissioner shall distribute funds authorized under Section 22a-446 subject to the requirements for public hearing set forth in this section. The following funding designations establish the general order in which assistance is made. It is the goal to establish a balance between planning, design and construction. Therefore, all needs within the highest funding designation need not be fulfilled before proceeding to the next highest funding designation.

(A) State matching grants for projects defined under Section 22a-439 for advanced treatment pollution abatement facilities and new secondary treatment pollution abatement facilities jointly funded with the Federal Construction Grants Program.

(B) Funds for the construction of state-owned pollution abatement facilities as provided under Section 22a-439a.

(C) Funds to finance grants or advances for planning allowable under Section 22a-439 to provide for program continuity including future fundable projects and townwide planning efforts; and for design allowable under Sections 22a-439 and 22a-443 for projects planned to proceed to construction within three years of award.

(D) Funds to provide 55% grants for construction of municipal pollution abatement facilities eligible under the remaining provisions of Section 22a-439. Within this category the Commissioner may also establish reserves of funds for the following purposes:

(i) A reserve of funds to finance unanticipated cost increases for projects previously funded under Section 22a-439.

(ii) A reserve of funds sufficient to finance at least one small community project as determined by the Commissioner in Section 22a-439-3 (b).

(iii) A reserve of funds sufficient to finance regional septage disposal facilities determined eligible by the Commissioner.

(iv) A reserve of up to $1,000,000 for projects deemed by the Commissioner to qualify for special priority funding status. This reserve is intended to allow flexibility in providing grant assistance for unanticipated needs which may arise during the fiscal year and are deserving of special consideration. Such projects may include emergency potable water supply protection, correction of pollution problems which immediately threaten the public health, expedited planning studies or investigations, or other unexpected high priority concerns.

(4) Annual Public Hearing

The amount of funds applied to each of the funding designations described above shall be determined annually by the Commissioner based upon available funds and shall be designated in a draft priority list. The draft priority list will indicate which specific projects are proposed to receive funding within each funding designation for the upcoming Federal fiscal year and shall be made available to appropriate local officials at least 30 days prior to a specified date for Public Hearing. The Commissioner will consider all written and oral testimony presented at the Hearing and may elect to modify the draft priority list on the basis of such testimony. The Commissioner shall also indicate his reasons for accepting or rejecting any suggested revisions as part of the Hearing record. Following notice of any changes to the priority list which may result from the Hearing, the priority list shall be deemed final except for minor revisions allowable under Section 22a-439-1 (e) (5).

(5) Revisions to the Priority List

(A) The priority system shall include a project bypass procedure. The Commissioner may bypass a project on the fundable portion of the priority list if he determines that the bypassed project will not be ready to proceed within the first six months of the funding year. The Commissioner shall advise, in writing, each municipality he intends to bypass and the reasons therefore. Projects that are bypassed will retain their relative priority rating for consideration in future years. Projects bypassed will be replaced by the next highest ranking project ready to proceed. Projects will be removed from the priority list the following year after they receive a grant.

(B) Revisions to the priority list may be made at any time during the funding period. If the Commissioner determines the change to be significant, a public hearing with appropriate notice will be held and all affected by such a change will be notified directly.

(Effective August 22, 1985)

Sec. 22a-439-2. Requirements for grants application

(a) **Types of Projects.**

The Commissioner is authorized to award grant assistance for the following types of projects:

(1) Planning grants and planning advances for the preparation of engineering reports.

(2) Design grants and design advances for preparation of contract plans and specifications.

(3) Construction grants for building of pollution abatement facilities and sewers.

(b) **Level of State Assistance.**

The amount of state funding assistance shall be based on the Commissioner's determination of eligibility and the provisions of Section 22a-439 of the Connecticut General Statutes.

(c) **Grant Applications.**

A municipality applying for state funding assistance must file properly executed forms and applications prescribed by the Commissioner. In addition, the following supporting documentation shall be submitted as appropriate:

(1) An application for Engineering Report Funding Assistance shall include:

(A) A Plan of Study including:

(i) The proposed planning area;

(ii) An identification of the entity or entities that will be conducting the planning;

(iii) The nature and scope of the proposed planning project and public participation program, including a schedule for the completion of specific tasks; and

(iv) An itemized description of the estimated engineering report costs.

(B) Proposed subagreements, or an explanation of the intended method of awarding subagreements, for performance of any substantial portion of the project.

(C) A resolution adopted by the municipality's Water Pollution Control Authority authorizing a specific person to file the application and execute the agreement for the grant. The resolution must be certified and sealed by the Town/City Clerk.

(D) Documented evidence that local share funding is in place.

(2) An Application for Design Funding Assistance shall include:

(A) An engineering report meeting all the requirements set forth in Section 22a-439-3 (a).

(B) Proposed subagreements, or an explanation of the intended method of awarding subagreements, for performance of any substantial portion of the project.

(C) A resolution adopted by the municipality's Water Pollution Control Authority authorizing a specific person to file the application and execute the agreement for the grant. The resolution must be certified and sealed by the Town/City Clerk.

(D) A value engineering (VE) commitment in compliance with Section 22a-439-3 (d) for all design funding assistance applications for projects with a projected total building cost of $10 million or more, including the cost for interceptor and collector sewers. For those projects requiring VE, the municipality may propose, subject to the Commissioner's approval, to exclude interceptor and collector sewers from the scope of the VE analysis.

(E) Proposed or executed (as determined appropriate by the Commissioner) intermunicipal agreements necessary for the construction and operation of the proposed pollution abatement facility for any facility serving two or more municipalities.

(F) A schedule for initiation and completion of the project work.

(G) Documented evidence that local funding is in place for the design and construction phases of the pollution abatement facilities.

(3) An Application for Construction Grant Assistance shall include:

(A) All requirements for design funding assistance as specified in Section 22a-439-2 (c) (2).

(B) A final legal opinion stating that the acquisition of all sites, easements or rights-of-way necessary to assure undisturbed construction and operation and maintenance of the proposed project have been acquired. The cost of any real property eligible for funding assistance must reflect fair market value as determined by standard recognized appraisal methods.

(C) Two copies of contract plans and specifications for the review and approval of the Commissioner.

(D) A schedule for submission of a proper operation and maintenance program including a preliminary plan of operation.

(E) An approved user charge system developed in accordance with the requirements set forth in Section 22a-439-3 (e).

(4) Terms of Funding Assistance

(A) No grant award shall be made for a pollution abatement facility that would provide capacity for new connections or other developments to be located in environmentally sensitive land such as wetlands, floodplains, prime agricultural lands, or regulated coastal zones. Appropriate and effective grant conditions (e.g. restricting sewer hook-ups) should be used where necessary to protect these resources from new development.

(B) The prime purpose in the award of construction grant assistance is to solve existing pollution problems and not intended to assist in new development.

(C) For engineering reports and design, no grant assistance will be allowed for any engineering work performed before a grant award without the prior written approval of the Commissioner.

(D) Except as otherwise provided in this paragraph, no grant assistance for construction may be awarded for any construction which is initiated prior to the date of grant award. Preliminary construction work, such as advance acquisition of major equipment items requiring long lead times, acquisition of an option for the purchase of eligible land, or advance construction of minor portions of a pollution abatement facility, including associated engineering costs, in emergencies or instances where delay could result in significant cost increases, may be approved by the Commissioner after completion of environmental review, but only if the municipality submits a written and adequately substantiated request.

(E) The approval of a plan of study, an engineering report, plans and specifications or advance acquisition of equipment or advance construction will not constitute a commitment or approval of grant assistance for a subsequent phase of the project. In instances where such approval is obtained the applicant proceeds at its own risk, since payment for such costs cannot be made unless grant assistance for the project is awarded.

(F) The municipality shall notify the Commissioner that it has complied or will comply with the applicable procurement provisions of Section 22a-439-4 (f), (g) and (h) before the award of any grant assistance.

(G) Within ninety (90) days after receipt of a completed application (excluding suspension periods for submission of supplemental information), the Commissioner will take one of the following actions: 1. approve for grant award; 2. defer due to lack of funding; or 3. disapprove the application. The applicant shall be promptly notified in writing of any deferral or disapproval. A deferral or disapproval of an application shall not preclude its reconsideration or a reapplication.

(H) The Commissioner will transmit the grant agreement to the applicant for execution. The grant agreement must be executed by the applicant and returned within 3 calendar weeks after receipt. The grant agreement shall set forth the approved project scope, budget (including the state share), total project costs, and the approved commencement and completion dates for the project or major phases thereof.

(I) The grant agreement shall set forth the amount of grant assistance. The grant amount may not exceed the amount of funds available for obligation in Section 22a-446. Grant payments will be limited to the State share of allowable project costs incurred within the grant amount or any increases effected through grant amendments.

(J) The amount and term of a grant shall be determined at the time of grant award. The time period is subject to extension for excusable delay, at the discretion of the Commissioner.

(Effective August 22, 1985)

Sec. 22a-439-3. Technical program elements

(a) **Engineering Report Requirements**

(1) General

Engineering reports consist of those necessary plans and studies which directly relate to the development of pollution abatement strategies and the construction of pollution abatement facilities necessary to comply with an Order to Abate Pollution as defined in Section 22a-423. The engineering report will demonstrate the need for the proposed pollution abatement facility through an evaluation of all feasible alternatives and shall demonstrate that the selected alternative is cost-effective, i.e. is the most economical means of meeting effluent and water quality goals while recognizing environmental considerations.

(2) Content of Engineering Reports

The content of the engineering report shall be determined by the Commissioner based on a pre-report conference with the municipality and its engineering consultant regarding the precise plan of study (engineering report outline) and resulting scope of services to be performed. Engineering reports must address as a minimum each of the following as determined appropriate by the Commissioner:

(A) A detailed evaluation of the existing and potential wastewater treatment and disposal problems in the study area.

(B) A cost-effective analysis of alternatives available to correct the pollution problems identified. The final selection of alternative(s) to correct the problems noted shall be based on the results of the cost-effectiveness analysis. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation, maintenance and replacement costs. The interest rate used for this analysis shall be the rate established by the Federal Water Resources Council for use in federally funded projects. The population forcasting in the analysis shall be consistent with current projections of the Connecticut Office of Policy and Management. A cost-effective analysis shall include:

(i) The relationship of the size and capacity of the recommended facilities to the needs to be served, including any reserve capacity.

(ii) An evaluation of alternative flow and waste reduction measures, including nonstructural methods.

(iii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new pollution abatement facilities.

(iv) An evaluation of the capability of each alternative to meet applicable effluent limitations and water quality standards.

(v) Appropriate consideration should be given to various treatment techniques including: conventional biological or physical-chemical treatment and discharge systems; land application techniques and other innovative and alternative techniques which may result in recycling of water and pollutants; onsite and nonconventional systems, both community and individual.

(vi) An evaluation of the alternative methods for the ultimate disposal of treated wastewater and sludge materials resulting from the treatment process and a justification for the method(s) chosen.

(vii) An adequate assessment of the expected environmental impact of alternatives (including sites) under the requirements of Section 22a-1a to 1f, inclusive, of the Connecticut General Statutes.

(C) If applicable, a demonstration of the non-existence or possible existence of excessive infiltration/inflow in the affected sewerage system.

(D) An identification of proposed effluent discharge limits if appropriate and a description of how the proposed project will result in compliance with any pollution abatement order issued by the Commissioner.

(E) A summary of public participation in the development of the engineering report.

(F) A brief statement demonstrating that the local authorities who will be implementing the plan have the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation and maintenance of the proposed pollution abatement facilities.

(G) A brief description of potential opportunities for recreation, open space, and access to bodies of water afforded by the recommended project.

(H) For the selected alternative, a concise description of at least the following:

(i) Estimated capital construction and operation and maintenance costs (identifying state and local shares) and a description of the manner in which local costs will be financed.

(ii) Estimated cost of future expansion and long term needs for reconstruction of pollution abatement facilities following their useful life.

(iii) Cost impacts on pollution abatement facility users.

(iv) A statement concerning the availability and estimated cost of any proposed treatment sites.

(3) Public Participation

(A) The scope and level of detail of the public participation program shall be determined during the development of the plan of study. The program shall be comprised of public forums such as workshops, meetings and hearing(s) as necessary to promote public awareness and input into the planning process.

(B) At a minimum, prior to adoption of the engineering report, the municipality must hold a public hearing to describe the proposed program and action(s) and to assure that the public's concerns are fully considered.

(C) The time and place of the public hearing shall be conspicuously and adequately announced at least 10 days in advance, or for such longer period as may be required by local ordinance or charter. Copies of the engineering report must be made available for inspection by the public at least 10 days prior to the hearing.

(D) A request to waive the public hearing on an engineering report may be submitted in writing to the Commissioner when the municipality determines a public hearing is not necessary and would not serve the public interest.

(4) Federal Requirements

Compliance with the engineering report requirements set forth herein does not constitute or imply compliance with similar federal grant program requirements for construction of pollution abatement facilities. In the event that the municipality may seek federal grant funds for a project, additional issues may have to be addressed in the engineering report to meet federal requirements in effect at that time.

(b) **Small Community Systems**

Projects proposed to be funded from the reserve for small communities shall be for improvements to existing wastewater treatment systems or new interceptor sewers and treatment works serving small communities. Routine interceptor sewer extensions within municipalities that do not meet the definition of a small community are not eligible for funding from this reserve. Categories of projects eligible for grant assistance under this reserve are (1) projects involving improvements to or construction of interceptor sewers and treatment works for which the entire proposed service area within the municipality meets the definitions of a small community and (2) projects for interceptor sewers connecting a service area meeting the definition of a small community to a wastewater treatment facility in another municipality. In order to be eligible for grant funding under this reserve, the applicant must demonstrate to the satisfaction of the Commissioner that the only alternative to the proposed project would be the construction of new treatment works which would involve a discharge of treated wastewater which would result in violation of or require a revision to the State's Water Quality Standards and Criteria as adopted pursuant to Section 22a-426 of the Connecticut General Statutes, as amended.

(c) **Privately Owned Individual Systems**

(1) A municipality may apply for a grant to construct privately owned pollution abatement facilities serving one or more principal residence or small commercial establishments.

(2) In addition to the engineering report requirements set forth in Section 22a-439-3 (a) the municipality shall:

(A) Demonstrate that the total present worth cost and environmental impact of building the individual systems will be less than the present worth cost of a larger municipally owned pollution abatement facility.

(B) Demonstrate to the satisfaction of the Commissioner that the individual systems proposed are part of a technically feasible and implementable program which will successfully address all existing and potential wastewater treatment needs within the planning area.

(C) Certify that the principal residence or small commercial establishment was constructed before July 11, 1983, and inhabited or in use on or before that date.

(D) Apply on behalf of a number of individual units to be served in the planning area.

(E) Certify that, where public ownership of such works is not feasible, the municipality will have unlimited right of access to the site and to the system for the purpose of necessary inspection, maintenance, and repair.

(F) Certify that such treatment works will be properly operated and maintained and will comply with all other requirements of these regulations, state statutes, and the Regulations of Connecticut State Agencies.

(G) Certify that a user charge system established in compliance with these regulations will be developed and implemented to ensure the availability of financial resources sufficient to ensure the proper operation, maintenance, and eventual repair or replacement of grant funded facilities and those individual systems which are

within the service area identified in paragraph (B) above but which are not required and replaced with the assistance of state grant funds.

(d) **Value Engineering (VE)**

(1) Value engineering proposal. All design funding assistance applications for projects having a projected total building cost of $10 million or more, including the cost for interceptor and collector sewers, will contain a VE commitment. The VE proposal must contain sufficient information for the Commissioner to determine the adequacy of the VE effort and the justification of the proposed VE fee. Essential information shall include the scope of VE analysis, VE team and VE coordinator (names and background), level of VE effort, VE cost estimate, and VE schedule in relation to project schedule (including completion of VE analysis and submittal of VE summary reports). The VE coordinator and a majority of the VE team members shall be employed by a firm (or firms) other than the design engineering consultant.

(2) Value engineering analysis. When the VE analysis is completed, a preliminary report summarizing the VE findings and a final report describing implementation of the VE recommendations must be submitted to the Commissioner.

(3) Implementation. For those projects on which a VE analysis has been performed, VE recommendations shall be implemented to the maximum extent feasible as determined by the Commissioner. The Commissioner shall consider VE recommendations on the basis of cost-effectiveness, reliability, and other factors that may be critical to the treatment processes and the environmental impact of the project and the extent of project delays.

(e) **User Charge System**

The user charge system must be designed to produce adequate revenues required for the operation, maintenance, and replacement of the pollution abatement facilities. It shall provide that each user which discharges wastewaters to the system that cause an increase in the cost of operating and maintaining pollution abatement facilities shall pay for such increased cost. The user charge system shall be based on either actual use or ad valorem taxes as follows:

(1) User charge system based on actual use. A municipality's user charge system based on actual use (or estimated use) of wastewater treatment services shall provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of pollution abatement facilities within the municipality's service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) User charge system based on ad valorem taxes. A municipality's user charge system which is based on ad valorem taxes shall provide that:

(A) On the effective date of these regulations, the municipality had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of pollution abatement facilities within the municipality's service area and the municipality has continued to use that system.

(B) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance (including replacement) of the pollution abatement facilities based upon charges for actual use.

(C) If the Commissioner determines that the municipality has historically demonstrated that the ad valorem system has resulted in proper operation and maintenance and management of the pollution abatement facilities including the sewer system.

(3) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of

the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Financial management system. Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system.

(5) Charges for operation and maintenance for extraneous flows. The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use, or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(i) Flow volume of the users.

(ii) Land area of the users.

(iii) Number of hookups or discharges of the users.

(iv) Property valuation of the users, if the municipality has an approved user charge system based on ad valorem taxes.

(6) Adoption of system. One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project is a treatment system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the municipality shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the pollution abatement facilities. Grant payments shall not exceed 90% of the total construction grant award until the municipality has adopted the approved user charge system.

(7) Implementation of system. The municipality shall implement its user charge system before the pollution abatement facility is placed in operation.

(f) **Sewer Use Ordinance**

(1) Each municipality applying for grant assistance shall demonstrate to the satisfaction of the Commissioner that a sewer use ordinance or other legally binding requirement has been or will be enacted and will be enforced in each jurisdiction served by the pollution abatement facility before the completion of construction. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer portions of the pollution abatement facility, shall insure that new sewers and connections to the pollution abatement facility are properly designed and constructed, and shall require that all wastewaters introduced into the pollution abatement facility will not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the pollution abatement facility, cause violation of the conditions of any permit issued by the Commissioner, or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

(2) Grant payments shall not exceed 50% of the total construction grant award until the municipality has submitted a copy of its sewer use ordinance to the Commissioner for review.

(3) Grant payments shall not exceed 90% of the total construction grant award until the municipality's sewer use ordinance has been approved by the Commissioner and enacted by the municipality.

(4) The municipality shall adopt and implement its sewer use ordinance before the pollution abatement facility is placed in operation.

(g) **Infiltration/Inflow**

(1) General. The municipality shall demonstrate to the Commissioner's satisfaction that each sewer system discharging into the proposed pollution abatement facility is not or will not be subject to excessive infiltration/inflow. For combined sewers, inflow is not considered excessive in any event.

(2) Inflow. If the rainfall induced peak inflow rate results or will result in chronic operational problems during storm events, the municipality shall perform a study of the sewer system to determine the quantity of excessive inflow and to propose a rehabilitation program to eliminate the excessive inflow. All cases in which pollution abatement facilities are planned for the specific storage and/or treatment of inflow shall be subject to a cost-effective analysis.

(3) Infiltration.

(A) If the flow rate at the existing pollution abatement facility is 150 gallons per capita per day or less during periods of high groundwater, the municipality shall build the project including sufficient capacity to transport and treat any existing infiltration. However, if the municipality believes any specific portion of its sewer system is subject to excessive infiltration, the municipality may confirm its belief in a cost-effective analysis and propose a sewer rehabilitation program to eliminate that specific excessive infiltration.

(B) If the flow rate at the existing pollution abatement facility is significantly more than 150 gallons per capita per day during periods of high groundwater, the municipality shall perform a study of the sewer system to determine the quantity of excessive infiltration and to propose a sewer rehabilitation program to eliminate the excessive infiltration.

(C) If the flow rate at the existing pollution abatement facility is not significantly more than 150 gallons per capita per day, the municipality may request the Commissioner to determine that the project proceed without further study.

(D) The Commissioner may authorize the municipality to perform minor sewer system rehabilitation concurrently with the sewer system evaluation survey if there is no adverse environmental impact. Rehabilitation which would be a part of the municipality's normal operation and maintenance responsibilities shall not be fundable.

(h) **Reserve Capacity**

The Commissioner will limit grant assistance for reserve capacity in pollution abatement facilities as follows:

(1) No grant shall be made to provide reserve capacity for a project for secondary or more stringent treatment or new interceptors and appurtenances. Grants for such projects shall be based on capacity necessary to serve existing needs as determined on the date of award of the construction grant and shall be consistent with the definition for eligible capacity established for the Federal Construction Grants Program in 40 CFR 35.2123.

(2) The Commissioner may require the construction of reasonable reserve capacity.

(3) All incremental costs for any reserve capacity in excess of that provided for herein shall be paid solely by the grantee. Incremental costs include all costs which would not have been incurred but for the additional reserve capacity.

(Effective August 22, 1985)

Sec. 22a-439-4. Administrative program elements

(a) **Allowable project costs.** Those costs associated with the planning, design and construction of pollution abatement facilities eligible for state funding assistance are as follows:

(1) Costs of salaries, benefits, and expendable materials the municipality incurs for the project, except as provided for in Section 22a-439-4 (b) (8).

(2) Costs under construction contracts.

(3) Professional and consultant services.

(4) Engineering report costs directly related to the pollution abatement facility.

(5) Sewer system evaluation.

(6) Project feasibility and related engineering reports.

(7) Costs of complying with the Connecticut Environmental Policy Act including costs of public notices and hearings.

(8) Preparation of construction drawings, specifications, estimates and construction contract documents.

(9) Reasonable landscaping.

(10) Materials acquired, consumed, or expended specifically for the project.

(11) Shop equipment installed at the pollution abatement facility necessary to the operation of the facility.

(12) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations.

(13) Development and preparation of a plan of operation and an operation and maintenance manual.

(14) Start-up services for new pollution abatement facilities.

(15) Project identification signs.

(16) Costs of complying with the procurement requirements of these regulations.

(17) The costs of technical services for assessing the merits of or negotiating the settlement of a claim by or against the municipality provided:

(A) A formal grant amendment is executed specifically covering the costs before they are incurred.

(B) The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the municipality.

(C) The Commissioner determines that there is a significant State interest in the issues involved in the claim.

(18) Change orders and the costs of meritorious contractor claims for increased costs provided the costs are not caused by the municipality's mismanagement or vicarious liability for the improper action of others. Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the Commissioner and shall be allowable only to the extent they are not caused by municipality mismanagement, are reasonable, and do not attempt to pass on to the State of Connecticut the costs of events that were the responsibility of the municipality, contractor or others.

(19) Costs necessary to mitigate only direct, adverse, or physical impacts resulting from the building of the pollution abatement facility.

(20) The costs of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from the project.

(21) For individual and small community systems, allowable costs include:

(A) The cost of major rehabilitation, upgrading, enlarging and installing small and onsite systems, but in the case of privately owned systems, only for principal residences.

(B) Conveyance pipes from property line to an offsite treatment unit which serves a cluster of buildings.

(C) Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in house devices.

(D) Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer.

(E) The cost of restoring individual system building sites to their original condition.

(22) Necessary safety equipment applicable to Federal, State and local requirements.

(23) A portion of the costs of collection system maintenance equipment as determined by the Commissioner.

(24) The cost of mobile equipment necessary for the operation of the overall pollution abatement facility, transmission of wastewater or sludge or for the maintenance of equipment. These items include:

(A) Portable stand-by generators.

(B) Large portable emergency pumps to provide ''pump-around'' capability in event of pump station failure or pipeline breaks.

(C) Sludge or septic tanktrucks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the pollution abatement facility or disposal site.

(25) Replacement parts identified and approved in advance by the Commissioner as necessary to assure uninterrupted operation of the pollution abatement facility, provided they are critical parts or major system components which are:

(A) Not immediately available and/or whose procurement involves an extended ''lead-time'';

(B) Identified as critical by the equipment supplier(s); or

(C) Critical but not included in inventory provided by the equipment supplier(s).

(26) Allowable costs for infiltration/inflow include:

(A) The cost of sewer system and pollution abatement facility capacity adequate to transport and treat nonexcessive infiltration/inflow.

(B) The costs of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system evaluation study under Section 22a-439-3 (g).

(27) The costs of royalties for the use of rights in a patented process or product with the prior approval of the Commissioner.

(28) The cost of legal and engineering services incurred by the municipality in deciding procurement protests and defending their decisions in protest appeals with the prior approval of the Commissioner.

(29) The cost of the services of the prime engineer required under Section 22a-439-4 (n) (10) during the first year following initiation of operation of the pollution abatement facility.

(30) The costs of municipal employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the pollution abatement facility, if approved in advance by the Commissioner.

(b) **Unallowable Project Costs.**

Costs which are not necessary for the construction of a pollution abatement facility are unallowable. Such costs include, but are not limited to:

(1) Basin or areawide planning not directly related to the project.

(2) Bonus payments not legally required for completion of construction before a contractual completion date.

(3) Personal injury compensation or damage arising out of the project whether determined by arbitration, negotiation, or otherwise.

(4) Unallowable costs for small and onsite systems include:

(A) Modification to physical structure of homes or commercial establishments.

(B) Conveyance pipes from the house to the treatment unit located on users property.

(C) Wastewater generating fixtures such as commodes, sinks, tubs and drains.

(5) Fines and penalties due to violations of, or failure to comply with Federal, State, or local laws and regulations.

(6) Costs outside the scope of the approved project.

(7) Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them.

(8) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in Section 22a-439-4 (f) (13).

(9) The costs of acquisition (including associated legal, administrative, and engineering) of sewer rights-of-way, pollution abatement facility sites (including small systems sites), sanitary landfill sites and sludge disposal sites, except as provided in Section 22a-439-4 (c).

(10) Costs for which payment has been or will be received under any Federal assistance program.

(11) The cost of vehicles used primarily for transportation, such as pickup trucks.

(12) Costs of equipment or materials acquired in violation of the procurement provisions of these requirements.

(13) The cost of furnishings including draperies, furniture and office equipment.

(14) The cost of ordinary site and building maintenance equipment such as lawn mowers, snowblowers and vacuum cleaners.

(15) Costs of monitoring equipment used by industry for sampling and analysis of industrial discharges to a municipal pollution abatement facility.

(16) Construction of privately-owned pollution abatement facilities, including pretreatment facilities, except for individual systems.

(17) Preparation of applications, including a plan of study and permits required by Federal, State or local laws and regulations.

(18) Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government.

(19) The cost of a pollution abatement facility or any part thereof that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands, floodplains, or prime agricultural lands.

(20) The costs of legal services for assessing the merits of defending or negotiating the settlement of a claim by or against the municipality.

(21) All incremental costs of delay due to the award of any significant subagreements for construction more than 12 months after the construction grant award.

(c) **Allowable Project Costs, If Approved.**

(1) The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Commissioner approves it in the grant agreement. These costs include:

(A) The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes.

(B) The cost of land acquired for a soil absorption system for a group of two or more homes.

(C) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment.

(D) The cost of land acquired for storage of treated wastewater in land treatment systems before land application.

(E) The cost paid by the municipality for eligible land in excess of just compensation based on the appraised value, the municipality's record of negotiation or a condemnation proceeding, as determined by the Commissioner, shall be unallowable.

(2) The cost associated with the preparation of the pollution abatement facility site before, during and, to the extent agreed on in the grant agreement, after building. These costs include:

(A) The cost of demolition of existing structures on the pollution abatement facilities site (including rights-of-way) if building cannot be undertaken without such demolition.

(B) The cost of removal, relocation or replacement of utilities, for which the municipality is legally obligated to pay under Section 22a-470 of the Connecticut General Statutes.

(C) The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

(3) The cost of acquiring all or part of existing publicly or privately owned pollution abatement facilities provided all following criteria are met:

(A) The acquisition, in and of itself considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits.

(B) The acquired pollution abatement facility was not built with previous Federal or State financial assistance.

(C) The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt.

(d) **Required Provisions for Architectural/Engineering Contracts**

(1) Subagreement Enforcement

(A) Commissioner's Authority. At a municipality's request the Commissioner may provide technical and legal assistance in the administration and enforcement of any subagreement related to a pollution abatement facility for which a State grant was made and intervene in any civil action involving the enforcement of such subagreements, including subagreement disputes which are the subject of either arbitration or court action. Any assistance to be provided is at the discretion of the Commissioner and in a manner determined by him to best serve the public interest. Factors which the Commissioner may consider in determining whether to provide assistance include:

(i) Available agency resources.

(ii) Planned or ongoing enforcement action.

(iii) The municipality's demonstration of good faith in attempting to resolve the contract matters at issue.

(iv) The municipality's adequate documentation of the need for assistance.

(v) The state's interest in the contract matters at issue.

(B) Municipality request. The municipality's request for technical or legal assistance should be submitted in writing and be accompanied by documentation adequate to inform the Commissioner of the nature and necessity of the requested assistance.

(C) Privity of subagreement. The Commissioner's technical or legal involvement in any subagreement dispute will not make the Commissioner a party to any subagreement entered into by the municipality.

(D) Municipality responsibility. The provisions of technical or legal assistance under this section in no way releases the municipality from its obligations under these regulations or affects the Commissioner's right to take remedial action against a municipality that fails to carry out those obligations.

(2) Subagreement Provisions

Municipalities shall include subagreement clauses that meet the following requirements:

(A) Each subagreement must include provisions defining a sound and complete agreement, including the:

(i) Nature, scope, and extent of work to be performed.

(ii) Time frame for performance.

(iii) Total cost of the subagreement.

(iv) Payment provisions.

(B) All subagreements awarded in excess of $10,000 shall contain provisions requiring compliance with State and Federal equal employment opportunity laws and regulations.

(3) Model Subagreement Clauses

Muncipalities must include the following clauses or their equivalent in all subagreements for architectural or engineering services. Municipalities may substitute other terms for ''municipality'' and ''engineer'' in their subagreements.

(A) Supersession

The municipality and the engineer agree that this and other appropriate clauses in this section or their equivalent apply to the state grant eligible work to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

(B) Privity of Subagreement

This subagreement is expected to be funded in part with funds from the State of Connecticut, Department of Environmental Protection (DEP). Neither the State nor any of its departments, agencies, or employees is or will be a party to this subagreement or any lower tier subagreement. This subagreement is subject to regulations adopted pursuant to Section 22a-439 of the Connecticut General Statutes in effect on the date of the grant award for the project.

(C) Changes

(i) The municipality may at any time, by written order, make changes within the general scope of this subagreement in the services or work to be performed. If such changes cause an increase or decrease in the engineer's cost or time required to perform any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this subagreement shall be modified in writing. The engineer must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the engineer of the notification

of change unless the municipality grants additional time before the date of final payment.

(ii) No services for which an additional compensation will be charged by the engineer shall be furnished without the written authorization of the municipality.

(D) Termination

(i) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill obligations under this subagreement through no fault of the terminating party. However, no termination may be effected unless the other party is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

(ii) This subagreement may be terminated in whole or in part in writing by the municipality for its convenience, provided that the engineer is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

(iii) In the event that there is a modification of the Commissioner's requirements relating to the services to be performed under this agreement after the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in the agreement shall be reflected in an appropriate modification of this agreement.

(iv) If termination for default is effected by the municipality, an equitable adjustment in the price provided for in this subagreement shall be made, but no amount shall be allowed for anticipated profit on unperformed services or other work and any payment due to the engineer at the time of termination may be adjusted to cover any additional costs to the municipality because of the engineer's default. If termination for default is effected by the engineer; or if termination for convenience is effected by the municipality; the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the engineer for services rendered and expenses incurred prior to the termination, in addition to termination and settlement costs reasonably incurred by the engineer relating to commitments which had become firm prior to the termination.

(v) Upon receipt of a termination action pursuant to paragraphs (i) or (ii) above, the engineer shall promptly discontinue all services affected (unless the notice directs otherwise) and deliver or otherwise make available to the municipality all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the engineer in performing this subagreement, whether completed or in process.

(vi) Upon termination under paragraphs (i) or (ii) above, the municipality may take over the work and prosecute the same to completion by subagreement with another party or otherwise.

(vii) If, after termination for failure of the engineer to fulfill contractual obligations, it is determined that the engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the municipality. In such event, adjustment of the price provided for in this subagreement shall be made as provided in paragraph (iv) of this clause.

(E) Remedies

Except as may be otherwise provided in this subagreement, all claims, counterclaims, disputes, and other matters in question between the municipality and the

engineer arising out of or relating to this subagreement or the breach thereof will be decided by arbitration, if the parties mutually agree, or in a court of competent jurisdiction within the district in which the municipality is located.

(F) Price Reduction for Defective Cost or Pricing Data (This clause is applicable if the amount of the agreement exceeds $100,000.)

The engineer warrants that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements and lower tier subagreements is based on current, accurate, and complete data supported by books and records. If the municipality or Commissioner determines that any price, including profit, negotiated in connection with this subagreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price, cost or profit shall be reduced accordingly, and the subagreement shall be modified in writing to reflect such reduction.

(NOTE—Since the subagreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontractors, the engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by lower tier subcontractors.)

(G) Audit; Access to Records

(i) The engineer shall maintain books, records, documents, and other evidence directly pertinent to performance on grant work under this agreement in accordance with generally accepted accounting principles and practices consistently applied. The engineer shall also maintain the financial information and data used by the engineer in the preparation or support of the cost submission required for any negotiated subagreement or change order in effect on the date of execution of this agreement and a copy of the cost summary shall be submitted to the municipality. The Commissioner or any of his duly authorized representatives shall have access to all such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The engineer will provide proper facilities for such access and inspection.

(ii) The engineer agrees to include paragraphs (i) through (v) of this clause in all his contracts and all lower tier subcontracts directly related to project performance that are in excess of $10,000, and to make paragraphs (i) through (v) of this clause applicable to all change orders directly related to project performance.

(iii) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(iv) The engineer agrees to the disclosure of all information and reports resulting from access to records under paragraphs (i) and (ii) of this clause, to any of the agencies referred to in paragraph (i), provided that the engineer is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the engineer.

(v) The engineer shall maintain and make available records under paragraphs (i) and (ii) of this clause during performance on grant funded work under this agreement and until 3 years from the date of final grant payment for the project. In addition,

those records which relate to any "Dispute" appeal under a grant agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such appeal, litigation, claim, or exception.

(H) Covenant Against Contingent Fees

The engineer warrants that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the engineer for the purpose of securing business. For breach or violation of this warranty the municipality shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(I) Gratuities

(i) If the municipality finds after a notice and hearing that the engineer, or any of the engineer's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the municipality or the State, in an attempt to secure a subagreement of favorable treatment in awarding, amending, or making any determinations related to the performance of this agreement, the municipality may, by written notice to the engineer, terminate this agreement. The municipality may also pursue other rights and remedies that the law or this subagreement provides. However, the existence of the facts on which the municipality bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of the agreement.

(ii) In the event this subagreement is terminated as provided in paragraph (i), the municipality may pursue the same remedies against the engineer as it could pursue in the event of a breach of the subagreement by the engineer and, as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the municipality) which shall be not less than three nor more than ten times the costs the engineer incurs in providing any such gratuities to any such officer or employee.

(J) Responsibility of the Engineer

(i) The engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the engineer under this subagreement. The engineer shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.

(ii) The engineer shall perform the professional services necessary to accomplish the work required to be performed under this subagreement, in accordance with this subagreement and applicable requirements of the Commissioner in effect on the date of execution of the assistance agreement for this project.

(iii) Approval by the municipality or the Commissioner of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the engineer of responsibility for the technical adequacy of his work. Neither the municipality's nor Commissioner's review, approval, acceptance, or payment for any of the services shall be construed as a waiver of any rights under this subagreement or of any cause of action arising out of the performance of this subagreement.

(iv) The engineer shall be and shall remain liable, in accordance with applicable law, for all damages to the municipality or the State caused by the engineer's negligent performance of any of the services furnished under this subagreement, except for errors, omissions, or other deficiencies to the extent attributable to the municipality, municipality-furnished data, or any third party. The engineer shall not be responsible for any time delays in the project caused by circumstances beyond the engineer's control.

(v) The engineer's obligations under this clause are in addition to the engineer's other expressed or implied warranties under this subagreement or State law and in no way diminish any other rights that the municipality may have against the engineer for faulty materials, equipment, or work.

(K) Payment

(i) Payment shall be made in accordance with the payment schedule incorporated in this subagreement as soon as practicable upon submission of statements requesting payment by the engineer to the municipality. If no such payment schedule is incorporated in this subagreement, the payment provisions of paragraph (ii) of this clause shall apply.

(ii) The engineer may request monthly progress payments and the municipality shall make them as soon as practicable upon submission of statements requesting payment by the engineer to the municipality. When such progress payments are made, the municipality may withhold up to ten (10) percent of the vouchered amount until satisfactory completion by the engineer of work and services within a step called for under this subagreement. When the municipality determines that the work under this subagreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by the municipality to be adequate for its protection, it shall release to the engineer such excess amount.

(iii) No payment request made under paragraph (i) or (ii) of this clause shall exceed the estimated amount and value of the work and services performed by the engineer under this subagreement. The engineer shall prepare the estimates of work performed and shall supplement them with such supporting data as the municipality may require.

(iv) Upon satisfactory completion of the work performed under this subagreement, as a condition precedent to final payment under this subagreement or to settlement upon termination of the subagreement, the engineer shall execute and deliver to the municipality a release of all claims against the municipality arising under or by virtue of this subagreement, other than such claims, if any, as may be specifically exempted by the engineer from the operation of the release in stated amounts to be set forth therein.

(L) Copyrights and Rights in Data

(i) The engineer agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with State grant funds), technical reports, operating manuals, and other work submitted with an engineering report, or with a design or construction grant application or which are specified to be delivered under this subagreement or which are developed or produced and paid for under this subagreement (referred to in this clause as "Subject Data") and including all raw data obtained or generated by the engineer during the course of his work under this subagreement are subject to certain rights in the United States. These rights include the right to use, duplicate, and disclose such subject data, in whole or in part, in any manner for any purpose whatsoever, and to have others do so. If the material

is copyrightable, the engineer may copyright it, subject to the rights of the State described herein, but the municipality and the State reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The engineer shall include appropriate provisions to achieve the purpose of this condition in all subcontracts expected to produce copyrightable subject data.

(ii) All such subject data furnished by the engineer pursuant to this subagreement are instruments of his services in respect to the project. It is understood that the engineer does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the municipality reuses the subject data without the engineer's specific written verification or adaptation, such reuse will be at the risk of the municipality without liability to the engineer. Any such verification or adaptation will entitle the engineer to further compensation at rates agreed upon by the municipality and the engineer.

(e) **Required Provisions for Construction Contracts**

Municipalities must include, when appropriate, the following clauses or their equivalent in each subagreement and may substitute other terms for ''grantee'' and ''contractor'' in their subagreements:

(1) Supersession

The grantee and the contractor agree that the following general provisions or their equivalent apply to state grant eligible work to be performed under this contract and that these provisions supersede any conflicting provisions of this contract.

(2) Privity of contract

This contract is expected to be funded in part by the State of Connecticut. Neither the State, nor any of its departments, agencies, or employees is or will be a party to this contract or any lower tier subcontract. This contract is to be subject to regulations adopted in accordance with Section 22a-439 of the Connecticut General Statutes.

(3) Changes for contracts for construction:

(A) The municipality may, at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the subagreement, including but not limited to changes:

(i) In the specifications (including drawings and designs);

(ii) In the time, method, or manner of performance of the work;

(iii) In the grantee-furnished facilities, equipment, materials, services, or site; or

(iv) Directing acceleration in the performance of the work.

(B) A change order shall also be any other written or oral order (including direction, instruction, interpretation or determination) from the municipality which causes any change, provided the contractor gives the municipality written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.

(C) Except as provided in this clause, no order, statement, or conduct of the municipality shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

(D) If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the subagreement modified in writing. However, for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as

required in paragraph (B). In the case of defective specifications for which the municipality is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with those defective specifications.

(E) If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within thirty (30) days after receipt of a written change order under (A) of this change clause or the furnishing of a written notice under (B) of this clause, submit to the grantee a written statement setting forth the general nature and monetary extent of such claim. The municipality may extend the 30-day period. The statement of claim may be included in the notice under (B) of this clause.

(F) No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.

(4) Changes for contracts for supplies.

(A) The municipality may at any time, by a written order and without notice to the sureties, make changes within the general scope of this subagreement in any one or more of the following:

(i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the grantee;

(ii) Method of shipment or packing; and

(iii) Place of delivery.

(B) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this subagreement, whether or not changed by any such order, an equitable adjustment shall be made in the subagreement price or delivery schedule, or both, and the subagreement shall be modified in writing. Any claim by the contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the contractor of the notification change. If the municipality decides that the facts justify such action, the municipality may receive and act upon any such claim asserted at any time before final payment under this subagreement. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the grantee shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the subagreement as changed.

(5) Differing site conditions.

(A) The contractor shall promptly, and before such conditions are disturbed, notify the municipality in writing of:

(i) Subsurface or latent physicial conditions at the site differing materially from those indicated in this subagreement, or

(ii) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this subagreement. The municipality shall promptly investigate the conditions and, if it finds that conditions are materially different and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this subagreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the subagreement modified in writing.

(B) No claim of the contractor under this clause shall be allowed unless the contractor has given notice required in (A) of this clause. However, the municipality may extend the prescribed time.

(C) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this subagreement.

(6) Suspension of work

(A) The municipality may order the Contractor, in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the municipality may determine to be appropriate for the convenience of the municipality.

(B) If the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the municipality in administration of the contract, (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor, or for which an equitable adjustment is provided for or excluded under any other provision of the contract.

(C) No claim under this clause shall be allowed for any costs incurred more than 20 days before the contractor notified the municipality in writing of the act or failure to act involved (this requirement does not apply to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

(7) Termination

(A) This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

(B) This contract may be terminated in whole or in part in writing by the municipality for its convenience, provided that the contractor is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

(C) If termination for default is effected by the municipality, an equitable adjustment in the price provided for in this contract shall be made but no amount shall be allowed for anticipated profit on unperformed services or other work, and any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the municipality because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the municipality, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

(D) Upon receipt of a termination action pursuant to (A) or (B) above, the contractor shall promptly discontinue all services affected (unless the notice directs otherwise), and deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries and such other information and materi-

als as may have been accumulated by the contractor in performing this contract whether completed or in process.

(E) Upon termination under (A) or (B) of this clause the municipality may take over the work and may award another party a contract to complete the work under this contract.

(F) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the municipality. In such event, adjustment of the price provided for in this contract shall be made as provided in (C) of this clause.

(8) Remedies.

Except as may be otherwise provided in this contract, all claims, counter-claims, disputes, and other matters in question between the municipality and the contractor arising out of or relating to this contract or the breach thereof will be decided by arbitration if the parties mutually agree or in a court of competent jurisdiction within the district in which the municipality is located.

(9) Price reduction for defective cost or pricing data.

(NOTE—This clause is applicable to any contract negotiated between the municipality and its contractor in excess of $500,000; negotiated change orders in excess of $500,000 or 10 percent of the contract, whichever is less, affecting the price of a formally advertised, competitively awarded, fixed price contract; or any lower tier subcontract or purchase order in excess of $500,000 or 10 percent of the assistance agreement, whichever is less, under a contract other than a formally advertised, competitively awarded, fixed price subagreement. This clause is not applicable for contracts to the extent that they are awarded on the basis of effective price competition.)

The contractor and subcontractor, where appropriate, warrant that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated contracts, lower tier subcontracts and change orders is based on current, accurate, and complete data supported by their books and records. If the municipality or the Commissioner determines that any price (including profit) negotiated in connection with this contract, any lower tier subcontract, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price, cost or profit shall be reduced accordingly, and the contract shall be modified in writing to reflect such reduction.

(NOTE—Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier subcontracts, the contractor may wish to include a clause in each lower tier subcontract requiring the lower tier subcontractor to appropriately indemnify the contractor. It is also expected that any lower tier subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by lower tier contractors.)

(10) Audit; Access to records.

(A) The contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on grant work under this contract in accordance with generally accepted accounting principles and practices consistently applied. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required under Section 22a-439-4 (g) (6) for any negotiated contract or change order and a copy of the

cost summary submitted to the municipality. The municipality and the Commissioner or any of his authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(B) If this is a formally advertised, competitively awarded, fixed price contract, the contractor agrees to make (A) through (F) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the contractor agrees to include (A) through (F) of this clause in all his subcontracts in excess of $10,000 and to make paragraphs (A) through (F) of this clause applicable to all change orders directly related to project performance.

(C) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(D) The contractor agrees to disclose all information and reports resulting from access to records under (A) and (B) of this clause to any of the agencies referred to in (A).

(E) Records under (A) and (B) above shall be maintained and made available during performance on assisted work under this contract and until three years from the date of final State payment for the project. In addition, those records which relate to any dispute appeal arising under a grant assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim, or exception.

(F) This right of access clause (with respect to financial records) applies to:

(i) Negotiated prime subagreements;

(ii) Negotiated change orders or contract amendments in excess of $10,000 affecting the price of any formally advertised, competitively awarded, fixed price contract, and

(iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract. However, this right of access does not apply to a prime contract, lower tier subcontract, or purchase order awarded after effective price competition, except with respect to records pertaining directly to contract performance, (excluding any financial records of the contractor); if there is any indication that fraud, gross abuse, or corrupt practices may be involved or if the contract is terminated for default or for convenience.

(11) Covenant against contingent fees.

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the grantee shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

(12) Gratuities.

(A) If the municipality finds, after a notice and hearing, that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise, to any official, employee, or agent of the

municipality or the State, in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this agreement, the municipality may, by written notice to the contractor, terminate this agreement.The municipality may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts on which the municipality bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this agreement.

(B) In the event this contract is terminated, as provided in (A) in this clause, the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor and, as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the grantee) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

(13) Responsibility of the contractor.

(A) The contractor agrees to perform all work under this agreement in accordance with this agreement's designs, drawings, and specifications.

(B) The contractor warrants and guarantees for a period of one (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials, equipment or workmanship; and the contractor shall promptly make whatever adjustments or corrections necessary to cure such defects, including repairs of any damage to other parts of the system resulting from such defects. The municipality shall give notice to the contractor of observed defects with reasonable promptness. In the event that the contractor fails to make adjustments, repairs, corrections or other work that may be made necessary by such defect, the municipality may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

(C) The contractor's obligations under this clause are in addition to the contractor's other express or applied warranties under this agreement or State law and in no way diminish any other rights that the municipality may have against the contractor for faulty material, equipment, or work.

(14) Final payment.

Upon satisfactory completion of the work performed under this agreement, as a condition before final payment under this agreement, or as a termination settlement under this agreement, the contractor shall execute and deliver to the municipality a release of all claims against the municipality arising under or by virtue of this agreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this agreement or by State law or otherwise expressly agreed to by the parties to this agreement, final payment under this agreement or settlement upon termination of this agreement shall not constitute a waiver of the municipality's claims against the contractor or his sureties under this agreement or applicable performance and payment bonds.

(f) **Procurement Requirements—General**

(1) Applicability.

This defines the responsibilities of the State and the municipality and the minimum procurement standards for each municipality's procurement system.

(2) Municipality responsibility.

(A) The municipality is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of subagreements entered into

under the assistance agreement. This includes issuance of invitations for bids or requests for proposals, selection of contractors, award of subagreements, settlement of protests, claims, disputes and other related procurement matters.

(B) The municipality shall maintain a subagreement administration system to assure that contractors perform in accordance with the terms, conditions and specifications of their subagreements.

(C) The municipality shall review its proposed procurement actions to avoid purchasing unnecessary or duplicative items.

(D) The municipality shall consider consolidating its procurement or dividing it into parts to obtain a more economical purchase.

(E) Where appropriate, the municipality shall make an analysis of lease versus purchase alternatives in its procurement actions.

(F) A municipality may request technical assistance from the Commissioner for the administration and enforcement of any subagreement awarded under this section. However, such assistance does not relieve the municipality of its responsibilities under this section.

(G) A municipality may use innovative procurement methods or procedures only if it receives the Commissioner's prior written approval.

(3) Municipality reporting requirements.

The municipality shall request, in writing, the Commissioner's authorization to award each construction subagreement which has an aggregate value over $10,000. The request shall include:

(A) Name, address, telephone number and employee identification number of the construction contractor,

(B) Amount of the award,

(C) Estimated starting and completion dates,

(D) Project number, name and site location of the project, and

(E) Copy of the tabulations of bids or offers and the name of each bidder or offeror.

(4) Copies of contract documents.

The municipality must promptly submit to the Commissioner copies of any prime contract or modification thereof, and revisions to plans and specifications.

(5) Limitations on subagreement award.

(A) The municipality shall award subagreements only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. A responsible contractor is one that has:

(i) Financial resources, technical qualifications, experience, an organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these.

(ii) Resources to meet the completion schedule contained in the subagreement.

(iii) A satisfactory performance record for completion of subagreements.

(iv) Accounting and auditing procedures adequate to control property, funds and assets.

(v) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor laws and other statutory requirements.

(B) The municipality shall not make awards to contractors who have been suspended or debarred by Connecticut State Agencies.

The municipality shall refer violations of law to the local or State officials having the proper jurisdiction.

(7) Competition.

(A) The municipality shall conduct all procurement transactions in a manner that provides maximum open and free competition.

(B) Procurement practices shall not unduly restrict or eliminate competition. Examples of practices considered to be unduly restrictive include:

(i) Noncompetitive practices between firms.

(ii) Organizational conflicts of interest.

(iii) Unnecessary, experience and bonding requirements.

(iv) Local laws, ordinances, regulations or procedures which give local bidders or proposers preference over other bidders or proposers in evaluating bids or proposals.

(v) Placing unreasonable requirements on firms in order for them to qualify to do business.

(C) The municipality may use a prequalification list(s) of persons, firms or products if it:

(i) Updates its prequalified list(s) at least every six months.

(ii) Reviews and acts on each request for prequalification made more than thirty (30) days before the closing date for receipt of proposals or bid opening.

(iii) Gives adequate public notice of its prequalification procedures in accordance with the public notice procedures.

(D) A municipality may not use a prequalified list(s) of persons or firms if the procedure unnecessarily restricts competition.

(8) Profit.

(A) Municipalities must assure that only fair and reasonable profits are paid to contractors awarded subagreements under State assistance agreements.

(B) The municipality shall negotiate profit as a separate element of price for each subagreement in which there is no price competition, or where price is based on cost analysis.

(C) Where the grantee receives two or more bids, profit included in a formally advertised, competitively bid, fixed price subagreement shall be considered reasonable.

(D) Off-the-shelf or catalog supplies are exempt from this section.

(9) Use of small, minority, and women's businesses.

The municipality must take affirmative steps to assure that small, minority, and women's business are used whenever possible.

(10) Privity of subagreement.

The State shall not be a party to any subagreement nor to any solicitation or request for proposals.

(11) Documentation.

(A) Procurement records and files for procurements in excess of $10,000 shall include the following:

(i) Basis for contractor selection.

(ii) Written justification for selection of the procurement method.

(iii) Written justification for use of any specification which does not provide for maximum free and open competition.

(iv) Written justification for the type of subagreement.

(v) Basis for award cost or price, including a copy of the cost or price analysis made and documentation of negotiations.

(vi) A municipality must state the reasons in writing for rejecting any or all bids and the justification for procurements on a noncompetitively negotiated basis and make them available for public inspection.

(12) Specifications

(A) Nonrestrictive specifications.

(i) No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain proprietary, exclusionary or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least one brand name or trade name of comparable quality or utility is listed and is followed by the words "or equal." If brand or trade names are specified, the municipality must be prepared to identify to the Commissioner, or in any protest action, the salient requirements (relating to the minimum needs of the project) which must be met by any offeror. The single base bid method of solicitation for equipment and parts for determination of a low, responsive bidder may not be utilized. With regard to materials, if a single material is specified, the municipality must be prepared to substantiate the basis for the selection of the material.

(ii) Project specifications shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes.

(B) Sole source restriction. A specification shall not require the use of structures, materials, equipment, or processes which are known to be available only from a sole source, unless the Commissioner determines that the municipality's engineer has adequately justified in writing that the proposed use meets the particular project's minimum needs or the Commissioner determines that use of a single source is necessary to promote innovation.

(C) Experience clause restriction. The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases where the municipality's engineer adequately justifies any such requirement in writing. Where such justification has been made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required should not exceed the experience period specified.

(13) Force account work.

(A) The municipality must receive the Commissioner's prior written approval for use of the force account method for any planning, design work or construction work unless the grant agreement stipulates the force account method.

(B) The Commissioner may approve the force account method upon the municipality's demonstration that it possesses the necessary competence required to accomplish such work and that the work can be accomplished more economically by use of the force account method, or emergency circumstances dictate its use.

(C) Use of the force account method for construction work shall generally be limited to minor portions of a project.

(14) Code of conduct.

(A) The municipality shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of subagreements supported by State funds. No employee, officer or agent of the municipality shall participate in the selection, award or administration of a subagreement supported by State funds if a conflict of interest, real or apparent, would be involved.

(B) Such a conflict would arise when:

(i) Any employee, officer or agent of the municipality, any member of the immediate families, or their partners, have a financial or other interest in the firm selected for award.

(ii) An organization which may receive or has been awarded a subagreement employs, or is about to employ, any person under (B) (i) of this Section.

(C) The municipality's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or other parties to subagreements.

(D) Municipalities may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal value.

(E) To the extent permitted by State or local law or regulations, the municipality's code of conduct shall provide for penalties, sanctions or other disciplinary actions for violations of the code by the municipality's officers, employees or agents or by contractors or their agents.

(15) Payment to consultants.

(A) For all State assistance agreements, the State will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by a municipality or by a municipality's contractors or subcontractors to the maximum daily rate for a GS-18 federal employee. (Municipalities may, however, pay contractors and subcontractors more than this amount.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. The rate does not include transportation and subsistence costs for travel performed; municipalities will pay these in accordance with their normal travel reimbursement practices.

(B) Subagreements with firms for services which are awarded using these procurement requirements are not affected by this limitation.

(16) Cost and price considerations.

(A) The municipality shall conduct a cost analysis of all negotiated change orders and all negotiated subagreements estimated to exceed $10,000.

(B) The municipality shall conduct a price analysis of all formally advertised procurements estimated to exceed $10,000 if there are fewer than three bidders.

(C) For negotiated procurement, contractors and subcontractors shall submit cost or pricing data in support of their proposals to the municipality.

(17) Small purchases.

(A) Small Purchase Procurement.

If the aggregate amount involved in any one procurement transaction does not exceed $10,000 including estimated handling and freight charges, overhead and profit, the municipality may use small purchase procedures.

(B) Small Purchase Procedures.

Small purchase procedures are relatively simple procurement methods that are sound and appropriate for procurement of services, supplies or other property costing in the aggregate not more than $10,000.

(C) Requirements for Competition.

(i) Municipalities shall not divide a procurement into smaller parts to avoid the dollar limitation for competitive procurement.

(ii) Municipalities shall obtain price or rate quotations from an adequate number of qualified sources.

(18) Negotiation and award of subagreements.

(A) Unless the request for proposals states that award may be based on initial offers alone, the municipality must conduct meaningful negotiations with the best

qualified offerors with acceptable proposals within the competitive range, and permit revisions to obtain best and final offers. The best qualified offerors must have equal opportunities to negotiate or revise their proposals. During negotiations, the municipality must not disclose the identity of competing offerors or any information from competing proposals.

(B) The municipality must award the subagreement to the responsible offeror whose proposal is determined in writing to be the most advantageous to the municipality, taking into consideration price and other evaluation criteria set forth in the request for proposals.

(C) The municipality must promptly notify unsuccessful offerors that their proposals were rejected.

(D) The municipality must document its procurement file to indicate how proposals were evaluated, what factors were used to determine the best qualified offerors within the competitive range, and what factors were used to determine the subagreement award.

(19) Optional selection procedure for negotiation and award of subagreement for architectural and engineering services.

(A) The municipality may evaluate and select an architect or engineer using the procedures in this subdivision in place of the procedures in ''Negotiation and award of subagreements'' in subdivision (18).

(B) The municipality may use responses from requests for statement of qualifications to determine the most technically qualified architects or engineers.

(C) After selecting and ranking the most qualified architects or engineers, the municipality will request technical proposals from those architects or engineers and inform them of the evaluation criteria the municipality will use to rank the proposals.

(D) The municipality shall then select and determine, in writing, the best technical proposal.

(E) After selecting the best proposal, the municipality shall attempt to negotiate fair and reasonable compensation with that offeror.

(F) If the municipality and the offeror of the best proposal cannot agree on the amount of compensation, the municipality shall formally terminate negotiations with that offeror. The municipality shall then negotiate with the offeror with the next best proposal. This process will continue until the municipality reaches agreement on compensation with an offeror with an acceptable proposal. Once the municipality terminates negotiations with an offeror, the municipality cannot go back and renegotiate with that offeror.

(20) Noncompetitive negotiation procurement method.

Noncompetitive negotiation may be used only when the award of a subagreement is not feasible under small purchase, formal advertising, or competitive negotiation procedures. The grantee may award a noncompetitively negotiated subagreement only under the following circumstances:

(A) The item is available only from a single source;

(B) A public exigency or emergency exists and the urgency for the requirement will not permit a delay incident to competitive procurement;

(C) After solicitation from a number of sources, competition is determined to be inadequate.

(21) Use of the same architect or engineer during construction.

(A) If the municipality is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the planning or design services for the project, it may wish to retain that firm or individual during construction of

the project. The municipality may do so without further public notice and evaluation of qualifications provided that it received a planning or design grant and selected the architect or engineer in accordance with these procurement regulations.

(B) However, if the municipality uses the procedures in (A) to retain an architect or engineer, any construction subagreements between the architect or engineer and the municipality must meet the procurement provisions of Section 22a-439-4 (g) (5).

(22) Negotiation of subagreements.

(A) Formal advertising, with adequate purchase descriptions, sealed bids, and public openings shall be the required method of procurement unless negotiation under (B) of this section is necessary to accomplish sound procurement.

(B) All negotiated procurement shall be conducted in a manner to provide to the maximum practicable extent open and free competition appropriate to the type of project work to be performed. The municipality is authorized to negotiate subagreements if any of the following conditions exist:

(i) Public exigency will not permit the delay incident to formally advertised procurement (e.g. an emergency procurement).

(ii) The aggregate amount involved does not exceed $10,000.

(iii) The material or service to be procured is available from only one person or entity. If the procurement is expected to aggregate more than $10,000, the municipality must document its file with a justification of the need for noncompetitive procurement, and provide such documentation to the Commissioner on request.

(iv) The procurement is for personal or professional services (including architectural or engineering services) or for any service that a university or other educational institution may render.

(v) No responsive, responsible bids at acceptable price levels have been received after formal advertising, and the Commissioner's prior written approval has been obtained.

(vi) The procurement is for materials or services where the price is established by law.

(vii) The procurement is for technical items or equipment requiring standardization and interchangeability of parts with existing equipment.

(viii) The procurement is for experimental, developmental or research services.

(23) Enforcement.

If the Commissioner determines that the municipality has failed to comply with any of these procurement provisions, he may impose any of the following sanctions:

(A) The grant may be terminated or annulled under Section 22a-439-4 (s).

(B) Project costs directly related to the noncompliance may be disallowed.

(C) Payment otherwise due to the municipality of up to 10 percent may be withheld.

(D) Project work may be suspended under Sec. 22a-439-4 (e) (6).

(E) A noncomplying municipality may be found nonresponsible or ineligible for future state funding assistance or a noncomplying contractor may be found nonresponsible or ineligible for approval for future contract award under state grants.

(F) An injunction may be entered or other equitable relief afforded by a court of appropriate jurisdiction.

(G) Such other administrative or judicial action may be instituted if it is legally available and appropriate.

(24) Contract Enforcement.

(A) Commissioner authority. At the request of a municipality, the Commissioner is authorized to provide technical and legal assistance in the administration and

enforcement of any contract related to pollution abatement facilities for which a State grant was made and to intervene in any civil action involving the enforcement of such contracts, including contract disputes which are the subject of either arbitration or court action in accordance with the requirements of Section 22a-439-4 (d) (1).

(g) **Architectural/Engineering Procurement Requirements.**

(1) Type of Contract (Subagreement).

(A) General. Cost-plus-percentage-of-cost and percentage-of-construction-cost contracts are prohibited. Cost reimbursement, fixed price, or per diem contracts or combinations of these may be negotiated for architectural or engineering services. A fixed price contract is generally used only when the scope and extent of work to be performed is clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate. A per diem contract may be used if no other type of contract is appropriate. An incentive fee may be used if the municipality submits an adequate independent cost estimate and price comparison.

(B) Cost reimbursement contract. Each cost reimbursement contract must clearly establish a cost ceiling which the engineer may not exceed without formally amending the contract and a fixed dollar profit which may not be increased except in the case of a contract amendment to increase the scope of work.

(C) Fixed price contract. An acceptable fixed price contract is one which establishes a guaranteed maximum price which may not be increased unless a contract amendment increases the scope of work.

(D) Compensation procedures. If, under either a cost reimbursement or fixed price contract, the municipality desires to use a multiplier type of compensation, all of the following must apply:

(i) The multiplier and the portions of the multiplier allocable to overhead and allocable to profit have been specifically negotiated.

(ii) The portion of the multiplier allocable to overhead includes only allowable items of cost under the cost principles.

(iii) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract.

(iv) The fixed price contract includes a guaranteed maximum price for completion of the specifically defined scope of work; and the cost reimbursement contract includes a fixed dollar profit which may not be increased except in the case of a contract amendment which increases the scope of work.

(E) Per diem contracts. A per diem agreement may be utilized only after a determination that a fixed price or cost reimbursement type contract is not appropriate. Per diem agreements should be used only to a limited extent, e.g., where the first task under a planning grant involves establishing the scope and cost of succeeding planning tasks, or for incidental services such as expert testimony or intermittent professional or testing services. (Resident engineer and resident inspection services should generally be compensated at cost plus fixed fee). Cost and profit included in the per diem rate must be specifically negotiated and displayed separately in the engineer's proposal.

The contract must clearly establish a price ceiling which may not be exceeded without formally amending the contract.

(2) Public Notice. Adequate public notice must be given of the requirement for architectural or engineering services for all subagreements.

(A) Public announcement. A notice of request for qualifications should be published in professional journals, newspapers, or publications of general circulation over a reasonable area and, in addition, if desired, through posted public notices or

written notification directed to interested persons, firms, or professional organizations inviting the submission of statements of qualifications. The announcement must clearly state the deadline and place for submission of qualification statements.

(B) Exceptions. Public notice is not required under the following circumstances:

(i) For design or construction phases of a grant funded project if the municipality is satisfied with the qualifications and performance of any engineer who performed all or any part of the planning or design work and the engineer has the capacity to perform the subsequent steps.

(ii) The municipality desires the same engineer to provide architectural or engineering services for the subsequent steps or for subsequent segments of design work under one grant if a single pollution abatement facilities is segmented into two or more construction projects. If the design work is accordingly segmented so that the initial contract for preparation of construction drawings and specifications does not cover the entire pollution abatement facilities to be built under one grant and the municipality may use the same engineering firm that was selected for the initial segment of design work for subsequent segments.

(3) Evaluation of Qualifications.

(A) The municipality shall review the qualifications of firms which responded to the announcement or were on the prequalified list and shall uniformly evaluate the firms.

(B) Qualifications shall be evaluated through an objective process (e.g., the appointment of a board or committee which, to the extent practicable, should include persons with technical skills).

(C) Criteria which should be considered in the evaluation of candidates for submission of proposals should include:

(i) Specialized experience and technical competence of the candidate or firm and its personnel (including a joint venture, association or professional subcontractor) considering the type of services required and the complexity of the project.

(ii) Past record of performance on contracts with the municipality, other government agencies or public bodies, and with private industry, including such factors as control of costs, quality of work, and ability to meet schedules.

(iii) The candidate's capacity to perform the work (including any specialized services) within the time limitations, considering the firm's current and planned workload.

(iv) The candidate's familiarity with the types of problems applicable to the project.

(v) Avoidance of personal and organizational conflicts of interest.

(4) Solicitation and Evaluation of Proposals.

(A) Solicitation of Professional Services Proposals.

(i) Requests for professional services proposals must be sent to no fewer than three candidates who either responded to the public announcement or were selected from the prequalified list, unless, after good faith effort to solicit qualifications, fewer than three qualified candidates respond, in which case all qualified candidates must be provided request for proposals.

(ii) Requests for professional services proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals must include a solicitation statement and must inform offerors of the evaluation criteria.

(iii) Submission deadline. Requests for proposals must clearly state the deadline and place for submission.

(B) Evaluation of Proposals.

(i) All proposals submitted in response to the request for professional services proposals must be uniformly evaluated. The municipality shall also evaluate the candidate's proposed method of accomplishing the work required.

(ii) Proposals shall be evaluated through an objective process (e.g., the appointment of a board or committee) which, to the extent practicable, should include persons with technical skills. Oral (including telephone) or written interviews should be conducted with top rated proposers, and information derived therefrom shall be treated on a confidential basis.

(iii) Municipalities must base their determinations of qualified offerors and acceptable proposals solely on the evaluation criteria stated in the request for proposals.

(5) Negotiation.

(A) Municipalities are responsible for negotiation of their contracts for architectural or engineering services. Contract procurement including negotiation may be performed by the municipality directly or by another person or firm retained for the purpose. Contract negotiations may include the services of technical, legal, audit, or other specialists to the extent appropriate.

(B) Negotiations may be conducted in accordance with State or local requirements, as long as they meet the minimum requirements as set forth in this section.

(C) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proposed contract. The municipality and the candidate shall discuss, as a minimum:

(i) The scope and extent of work and other essential requirements.

(ii) Identification of the personnel and facilities necessary to accomplish the work within the required time including, where needed, employment of additional personnel, subcontracting, joint venture, etc.

(iii) Provisions of the required technical services in accordance with regulations and criteria established for the project.

(iv) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations.

(6) Cost and Price Considerations.

(A) The candidate(s) selected for negotiation shall submit to the municipality for review sufficient cost and pricing data to enable the municipality to ascertain the necessity and reasonableness of costs and amounts proposed and the allowability and eligibility of costs proposed.

(B) The municipality shall submit to the Commissioner for review:

(i) Documentation of the public notice of need for architectural or engineering services and selection procedures.

(ii) The cost and pricing data the selected engineer submitted.

(iii) A certification of review and acceptance of the selected engineer's cost and price.

(iv) A copy of the proposed subagreement.

(C) The Commissioner shall review the complete subagreement procurement procedure and approve the municipality's compliance with appropriate procedures before the municipality awards the subagreement.

(D) Cost review.

(i) The municipality shall review proposed subagreement costs.

(ii) As a minimum, proposed subagreement costs shall be presented on EPA form 5700-41 on which the selected engineer shall certify that the proposed costs

reflect complete, current, and accurate cost and pricing data applicable to the date of anticipated subagreement award.

(iii) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price contracts and a maximum total dollar amount of profit shall be set forth separately in the cost summary for cost reimbursement contracts.

(iv) The municipality may require more detailed cost data than the form requires in order to substantiate the reasonableness of proposed subagreement costs. The Commissioner may require more detailed documentation only when the selected engineer is unable to certify that the cost and pricing data used are complete, current, and accurate. The state may on a selected basis, perform a pre-award cost analysis on any subagreement. A provisional overhead rate should be agreed upon before contract award.

(v) The engineer shall have an accounting system which accounts for costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects. Allowable project costs shall be determined by the Commissioner. The engineer must propose and account for costs in a manner consistent with his normal accounting procedures.

(vi) Subagreements awarded on the basis of a review of a cost element summary and a certification of complete, current, and accurate cost and pricing data shall be subject to downward renegotiation or recoupment of funds where the Commissioner determines that such certification was not based on complete, current, and accurate cost and pricing data or was not based on allowable costs at the time of award.

(7) Profit.

The objective of negotiations shall be the exercise of sound judgment and good administrative practice including the determination of a fair and reasonable profit based on the firm's assumption of risk and input to total performance and not merely the application of a predetermined percentage factor. For the purpose of subagreements under State grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (This definition of profit may vary from the firm's definition of profit for other purposes.) Profit on a subagreement and each amendment to a subagreement under a grant should be sufficient to attract engineers who possess the talent and skills necessary for the accomplishment of project objectives, and to stimulate efficient and expeditious completion of the project. Where cost review is performed, the municipality should review the estimate of profit as it reviews all other elements of price.

(8) Award of Subagreement.

The municipality shall obtain the written approval of the Commissioner prior to the award of any subagreement or amendment.

(B) The municipality shall promptly notify unsuccessful candidates.

(9) Required Solicitation and Subagreement Provisions.

(A) Required solicitation statement. Requests for qualifications or proposals must include the following statement, as well as the proposed terms of the subagreement.

Any contract awarded under this request for (qualifications/professional proposals) is expected to be funded in part by a grant from the State of Connecticut, Department of Environmental Protection. This procurement will be subject to requirements contained in Section 22a-439 4 (f), (g), and (m) of the Regulations of Connecticut State Agencies. The State of Connecticut will not be a party to this request for (qualifications/professional proposals) or any resulting contract.

(B) Content of subagreement. Each subagreement must adequately define the scope and extent of project work; the time for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks; personnel and facilities necessary to accomplish the work within the required time; the extent of subcontracting and consultant agreements; and payment provisions. If any of these elements cannot be defined adequately for later tasks or steps at the time of contract execution, the contract should not include the subsequent tasks or steps at that time.

(10) Subagreement Payments-Architectural or Engineering Services.

The municipality shall make payment to the engineer in accordance with the payment schedule incorporated in the engineering agreement. Any retainage is at the option of the municipality. No payment request made by the engineer under the agreement may exceed the estimated amount and value of the work and services performed.

(11) Subcontracts under Subagreements for Architectural or Engineering Services.

Neither award and execution of subcontracts under a prime contract for architectural or engineering services nor the procurement and negotiation procedures used by the engineer in awarding such subcontracts are required to comply with any of the provisions, selection procedures, policies or principles set forth herein.

(h) **Construction Contract Procurement Requirements.**

(This section applies to construction contracts in excess of $10,000 awarded by municipalities for any construction projects.)

(1) Type of Contract.

Each contract shall be a fixed price (lump sum or unit price or a combination of the two) contract, unless the Commissioner gives advance written approval for the municipality to use some other acceptable type of contract. The cost-plus-percentage-of-cost contract shall not be used in any event.

(2) Formal Advertising.

Each contract shall be awarded after formal advertising, unless negotiations are permitted in accordance with Sec. 22a-439-4 (f) (18). Formal advertising shall be in accordance with the following:

(A) Adequate public notice. The municipality will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation beyond the municipality's locality (statewide, generally), inviting bids on the project work and stating the method by which bidding documents may be obtained or examined. Where the estimated cost of construction is $10 million or more, the municipality should publish the notice in trade journals of nationwide distribution. The municipality may solicit bids directly from bidders if it maintains a bidders list.

(B) Adequate time for preparing bids. Adequate time, generally not less than 30 days, must be allowed between the date when public notice is first published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when such notice is first published.

(C) Adequate bidding documents. The municipality shall prepare a reasonable number of bidding documents (invitations for bids) and shall furnish them upon request on a first-come, first-served basis. The municipality shall maintain a complete set of bidding documents and shall make them available for inspection and copying by any party. The bidding documents shall include:

(i) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule.

(ii) The terms and conditions of the contract to be awarded.

(iii) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract.

(iv) Responsibility requirements or criteria which will be employed in evaluating bidders.

(v) The following statement:

Any contract or contracts awarded under this invitation for bids are expected to be funded in part by a grant from the State of Connecticut (Department of Environmental Protection). Neither the State of Connecticut nor any of its departments, agencies or employees is or will be a party to this invitation for bids or any resulting contract. This procurement will be subject to the requirements contained in Section 22a-439-4 (f), (h), and (m) of the Regulations of Connecticut State Agencies.

(vi) A copy of Sec. 22a-439-4 (f), (h), and (m).

(vii) The prevailing State Wage Determination as applicable.

(D) Sealed bids. The municipality shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.

(E) Addenda to bidding documents. If a municipality desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the addenda shall be communicated in writing to all firms which have obtained bidding documents at least five (5) working days prior to the bid opening.

(F) Bid modifications. A firm which has submitted a bid shall be allowed to modify or withdraw its bid before the time of bid opening.

(G) Public opening of bids. The municipality shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

(H) Award to the low, responsive, responsible bidder.

(i) After bids are opened, the municipality shall evaluate them in accordance with the methods and criteria set forth in the bidding documents.

(ii) The municipality may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the low, responsive, responsible bidder.

(iii) If the municipality intends to make the award to a firm which did not submit the lowest bid, it shall prepare a written statement before any award, explaining why each lower bidder was deemed nonresponsible or nonresponsive. The Municipality shall retain such statement in its files and forward a copy to the Commissioner for review.

(iv) Local laws, ordinances, regulations or procedures which are designed or which operate to give local bidders preference over other bidders shall not be employed in evaluating bids.

(v) If an unresolved procurement review issue or a protest relates only to award of a subcontract or procurement of an item under the prime contract, and resolution of that issue or protest is unduly delaying performance of the prime contract, the Commissioner may authorize award and performance of the prime contract before resolution of the issue or protest, if the Commissioner determines that resolution of the protest will not affect the placement of the prime contract bidders and will not materially affect initial performance of the prime contract; and that award of the prime contract is in the State's best interest, will not materially affect resolution of the protest, and is not barred by State or local law.

(vi) The municipality shall not reject a bid as nonresponsive for failure to list or otherwise indicate the selection of a subcontractor(s) or equipment, unless the municipality has unambiguously stated in the solicitation documents that such failure to list shall render a bid nonresponsive and shall cause rejection of a bid.

(i) **Negotiation of Contract Amendments (Change Orders).**

(1) Grantees are responsible for the negotiation of construction contract changes orders. This function may be performed by the grantee directly or, if authorized, by his engineer. During negotiations with the contractor the grantee shall:

(A) Make certain that the contractor has a clear understanding of the scope and extent of work and other essential requirements.

(B) Assure that the contractor demonstrates that he will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time.

(C) Assure a fair and reasonable price for the required work.

(2) The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with (C) or (D) of this section, as appropriate. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by the method set forth in paragraphs (2) (A) through (2) (C) of this section, whichever is most advantageous to the municipality.

(A) Unit prices.

(i) Original bid items. Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed 15 percent of the original bid quantity and the total dollar change of that bid item is significant, the municipality shall review the unit price to determine if a new unit price should be negotiated.

(ii) New items. Unit prices of new items shall be negotiated.

(B) A lump sum to be negotiated.

(C) Cost reimbursement. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work plus an amount to be agreed upon to cover the cost of general overhead and profit to be negotiated.

(3) For each change order not in excess of $100,000 the contractor shall submit sufficient cost and pricing data to the municipality to enable the municipality to determine the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

(4) For each change order in excess of $100,000, the contractor shall submit to the municipality for review sufficient cost and pricing data as described in paragraphs (4) (A) through (4) (E) of this section to enable the municipality to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

(A) The contractor shall certify that proposed costs reflect complete, current, and accurate cost and pricing data applicable to the date of the change order.

(B) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price change orders and a specific total dollar amount of profit will be set forth separately in the cost summary for cost reimbursement change orders.

(C) The municipality may require more detailed cost data in order to substantiate the reasonableness of proposed change order costs. The Commissioner may, on a selected basis, perform a detailed cost analysis on any change order.

(D) For costs under cost reimbursement change orders, the contractor shall have an accounting system which accounts for such costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable change orders. Allowable change order costs shall be determined in accordance with Sections 22a-439-4 (a), (b) and (c). The contractor must propose and account for such costs in a manner consistent with his normal accounting procedures.

(E) Change orders awarded on the basis of review of a cost element summary and a certification of complete, current, and accurate cost and pricing data shall be subject to downward renegotiation and recoupment of funds where a subsequent audit substantiates that such certification was not based on complete, current and accurate cost and pricing data.

(5) Review by Commissioner. The municipality shall submit, before the execution of any change order in excess of $100,000, to the Commissioner for review and approval:

(A) The cost and pricing data the contractor submitted.

(B) A certification of review and acceptance of the contractor's cost or price.

(C) A copy of the proposed change order.

(6) Profit. The objective of negotiations shall be the exercise of sound business judgment and good administrative practice including the determination of a fair and reasonable profit based on the contractor's assumption of risk and input to total performance and not merely the application of a predetermined percentage factor. For the purpose of negotiated change orders to construction contracts under grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. The municipality should review the estimate of profit as it reviews all other elements of price.

(7) Related work. Related work shall not be split into two amendments or change orders merely to keep it under $100,000 and thereby avoid the requirements of (4) of this section. For change orders which include both additive and deductive items:

(A) If any single item (additive or deductive) exceeds $100,000 the requirements of (4) of this section shall be applicable.

(B) If no single additive or deductive item has a value of $100,000 but the total price of the change order is over $100,000, the requirements of (4) of this section shall be applicable.

(C) If the total of additive items of work in the change order exceeds $100,000 or the total of deductive items of work in the change order exceeds $100,000 and the net price of the change order is less than $100,000, the requirements of (4) of this section shall be applicable.

(j) **Subcontracts under Construction Contracts.**

(1) The award or execution of subcontracts by a prime contractor under a construction contract awarded to the prime contractor by the municipality, and the procurement and negotiation procedures used by prime contractors in awarding or executing subcontracts are not required to comply with any of the provisions, selection procedures, policies or principles set forth in Section 22a-439-4 (f) or (h) except those specifically stated in this section. In addition, the bid protest procedures of Section 22a-439-4 (m) are not available to parties executing subcontracts with prime contractors except as specifically provided in that section.

(2) The award or execution of subcontracts by a prime contractor under a formally advertised, competitively bid, fixed price construction contract awarded to the prime contractor by the municipality, and the procurement and negotiation procedures

used by such prime contractors in awarding or executing such subcontracts must comply with any municipality procurement system, State small, minority and women's business policy, (Section 22a-439-4 (f) (9)), negotiation of contract amendments (Section 22a-439-4 (i)), and clauses (8) and (9) of Section 22a-439-4 (e).

(k) **Progress Payments to Contractors.**

(1) Except as State law otherwise provides, municipalities should make prompt progress payments to prime contractors and prime contractors should make prompt progress payments to subcontractors and suppliers for eligible construction, material, and equipment costs, including those of undelivered, specifically manufactured equipment, incurred under a contract under a State-funded construction grant.

(2) Conditions of progress payments. For purposes of this section, progress payments are defined as follows:

(A) Payments for work in place.

(B) Payments for materials or equipment which have been delivered to the construction site, or which are stockpiled in the vicinity of the construction site, in accordance with the terms of the contract, when conditional or final acceptance is made by or for the municipality. The municipality shall assure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures. Costs of such insurance and security are allowable costs.

(C) Payments for undelivered specifically manufactured items or equipment (excluding off-the-shelf or catalog items) as work on them progresses. Such payments must be made if provisions therefor are included in the bid and contract documents. Such provisions may be included at the option of the municipality only when all of the following conditions exist:

(i) The equipment is so designated in the project specifications.

(ii) The equipment to be specifically manufactured for the project could not be readily utilized on nor diverted to another job.

(iii) A fabrication period of more than 6 months is anticipated.

(3) Protection of progress payments made for specifically manufactured equipment. The municipality will assure protection of the State's interest in progress payments made for items or equipment referred to in (2) (C) of this section. The protection must be acceptable to the municipality and must take the form of:

(A) Securities negotiable without recourse, condition or restrictions, a progress payment bond, or an irrevocable letter of credit provided to the municipality through the prime contractor by the subcontractor or supplier; and

(B) For items or equipment in excess of $200,000 in value which are manufactured in a jurisdiction in which the Uniform Commercial Code is applicable, the creation and perfection of a security interest under the Uniform Commercial Code which is reasonably adequate to protect the interests of the municipality.

(4) Limitations on progress payments for specifically manufactured equipment.

(A) Progress payments made for specifically manufactured equipment or items shall be limited to the following:

(i) A first payment upon submission by the prime contractor of shop drawings for the equipment or items in an amount not exceeding 15 percent of the contract or item price plus appropriate and allowable higher tier costs; and

(ii) Subsequent to the municipality's release or approval for manufacture, additional payments not more frequently than monthly thereafter up to 75 percent of the contract or item price plus appropriate and allowable higher tier costs. However, payment may also be made in accordance with the contract and grant terms and

conditions for ancillary onsite work before delivery of the specifically manufactured equipment or items.

(B) In no case may progress payments for undelivered equipment or items under (4) (A) (i) or (4) (A) (ii) of this section be made in an amount greater than 75 percent of the cumulative incurred costs allocable to contract performance with respect to the equipment or items. Submission of a request for any such progress payments must be accompanied by a certification furnished by the fabricator of the equipment or item that the amount of progress payment claimed constitutes not more than 75 percent of cumulative incurred costs allocable to contract performance and, in addition, in the case of the first progress payment request a certification that the amount claimed does not exceed 15 percent of the contract or item price quoted by the fabricator.

(C) As used in this section, the term "costs allocable to contract performance" with respect to undelivered equipment or items includes all expenses of contract performance which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices consistently applied and which are not excluded by the contract.

(5) Enforcement. A subcontractor or supplier which is determined by the Commissioner to have frustrated the intent of the provisions regarding progress payments for major equipment or specifically manufactured equipment through intentional forfeiture of its bond or failure to deliver the equipment may be determined nonresponsible and ineligible for further work under State funded projects.

(6) Contract provisions. Where applicable, appropriate provisions regarding progress payments must be included in each contract and subcontract.

(7) Implementation. The foregoing progress payments policy should be implemented in invitations for bids under construction grants. If provision for progress payments is made after contract award, it must be for consideration that the municipality deems adequate.

(*l*) **Retention from Progress Payments.**

(1) The municipality may retain a portion of the amount otherwise due the contractor. The amount the municipality retains shall be limited to the following:

(A) Withholding of not more than 5 percent of the payment claimed until work is 50 percent complete.

(B) When work is 50 percent complete, reduction of the withholding to 2 percent of the dollar value of all work satisfactorily completed to date, provided that the contractor is making satisfactory progress and there is no specific cause for greater withholding.

(C) When the work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below 2 percent to only that amount necessary to assure completion.

(D) The municipality may reinstate up to 5 percent withholding if the municipality determines, at its discretion, that the contractor is not making satisfactory progress or there is other specific cause for such withholding.

(E) The municipality may accept securities negotiable without recourse, condition or restrictions, a release of retainage bond, or an irrevocable letter of credit provided by the contractor instead of all or part of the cash retainage.

(2) The foregoing retention policy shall be implemented with respect to all construction projects. Appropriate provision to assure compliance with this policy must be included in the bid documents for such projects initially or by addendum

before the bid submission date and as a special condition in the grant agreement or in a grant amendment.

(3) A municipality which delays disbursement of grant funds will be required to credit to the State of Connecticut all interest earned on those funds.

(m) **Protests.**

(1) General. A protest based upon an alleged violation of the procurement requirements may be filed against a municipality's procurement action by a party with an adversely affected direct financial interest. Any such protest must be received by the municipality within the time period in (2) (A) of this section. The municipality is responsible for resolution of the protest before taking the protested action, in accordance with (4) of this section, except as otherwise provided by (10) of this section.

(2) Time limitations.

(A) A protest under (4) of this section should be made as early as possible during the procurement process to avoid disruption of or unnecessary delay to the procurement process. A protest authorized by (4) of this section must be received by the municipality within one week after the basis for the protest is known or should have been known, whichever is earlier.

(i) In the case of an alleged violation of the specification requirements of Section 22a-439-4 (f) (12), relating to specifications (e.g., that a product fails to qualify as an "or equal") a protest need not be filed prior to the opening of bids. The municipality may resolve the issue before receipt of bids or proposals through a written or other formal determination, after notice and opportunity to comment is afforded to any party with a direct financial interest.

(ii) When an alleged violation of the specification requirements first arises subsequent to the receipt of bids or proposals, the municipality must decide the protest if the protest was received by the municipality within one week of the time that the municipality's written or other formal notice is first received.

(B) A protest appeal authorized by (5) of this section must be filed in a court of competent jurisdiction within the locality of the municipality within one week after the complainant has received the municipality's determination.

(C) If a protest is mailed, the complaining party bears the risk of nondelivery within the required time period. All documents transmitted in accordance with this section shall be mailed by certified mail (return receipt requested) or otherwise delivered in a manner which will objectively establish the date of receipt. Initiation of protest actions under (4) or (5) of this section may be made by brief telegraphic notice accompanied by prompt mailing or other delivery of a more detailed statement of the basis for the protest. Telephone protests will not be considered.

(3) Other initial requirements.

(A) The initial protest document must briefly state the basis for the protest and should:

(i) Refer to the specific portions of these regulations which allegedly prohibit the procurement action;

(ii) Specifically request a determination pursuant to this section;

(iii) Identify the specific procurement document(s) or portion(s) of them in issue; and

(iv) Include the name, telephone number, and address of the person representing the protesting party.

(B) The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct

financial interest which may be adversely affected by the determination of the protest (all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied or sustained) and to the Commissioner.

(4) Municipality determination.

(A) The municipality is responsible for the initial resolution of protests based upon alleged violations of the procurement requirements.

(B) When the municipality receives a timely written protest, it must defer the protested procurement action in accordance with (8) of this section and:

(i) Afford the complaining party and interested parties an opportunity to present arguments in support of their views in writing or at a conference or other suitable meeting (such as a city council meeting);

(ii) Inform the complainant and other interested parties of the procedures which the municipality will observe for resolution of the protest;

(iii) Obtain an appropriate extension of the period for acceptance of the bid and bid bond(s) of each interested party, where applicable (failure to agree to a suitable extension of such bid and bid bond(s) by the party which initiated the protest shall be cause for summary dismissal of the protest by the municipality or the Commissioner); and

(iv) Promptly deliver (by certified mail, return receipt requested, or by personal delivery) its written determination of the protest to the complaining party and to each other participating party.

(C) The municipality's determination must be accompanied by a legal opinion addressing issues arising under State, or local law, if any and, when construction is involved, by an engineering report, if appropriate.

(D) The municipality should decide the protest as promptly as possible-generally within 3 weeks after receipt of a protest, unless extenuating circumstances require a longer period of time for proper resolution of the protest.

(5) Procedures.

(A) Where resolution of an issue properly raised with respect to a procurement requirement necessitates prior or collateral resolution of a legal issue arising under State or local law, and such law is not clearly established in published legal decisions of the State or other relevant jurisdiction, the municipality may rely upon:

(i) An opinion of the municipality's legal counsel adequately addressing the issue; or

(ii) The established or consistent practice of the municipality, to the extent appropriate; or

(iii) The law of other local jurisdictions as established in published legal decisions; or

(iv) If none of the foregoing adequately resolve the issue, published decisions of the Comptroller General of the United States (U.S. General Accounting Office) or of the Federal or State courts addressing Federal or State requirements comparable to procurement requirements of this section.

(B) A party who submits a document subsequent to initiation of a protest proceeding must simultaneously furnish each of the other parties with a copy of such document.

(C) The procedures established herein are not intended to preclude informal resolution or voluntary withdrawal of protests. A complainant may withdraw its appeal at any time, and the protest proceedings shall thereupon be terminated.

(D) A protest may be dismissed for failure to comply with procedural requirements set forth in this section.

(6) Burden of proof.

(A) In protest proceedings, if the municipality proposes to award a formally advertised, competitively bid, fixed price contract to a party who has submitted the apparent lowest price, the party initiating the protest will bear the burden of proof.

(B) In protest proceedings:

(i) If the municipality proposes to award a formally advertised, competitively bid, fixed price contract to a bidder other than the bidder which submitted the apparent lowest price, the municipality will bear the burden of proving that its determination concerning responsiveness is in accordance with these regulations; and

(ii) If the basis for the municipality's determination is a finding of nonresponsibility, the municipality must establish and substantiate the basis for its determination and must adequately establish that such determination has been made in good faith.

(7) Deferral of procurement action. Upon receipt of a protest, the municipality must defer the protested procurement action (for example, defer the issuance of solicitations, contract award, or issuance of notice to proceed under a contract) until ten days after delivery of its determination to the participating parties. The municipality may receive or open bids at its own risk, if it considers this to be in its best interest. When the Commissioner has received a written protest, he must notify the municipality promptly to defer its protested procurement action until notified of the formal or informal resolution of the protest.

(8) Enforcement. Noncompliance with the procurement provisions by the municipality shall be cause for enforcement action in accordance with one or more of the provisions of Section 22a-439-4 (f) (23).

(9) Limitation. A protest may not be filed with respect to the following:

(A) Issues not arising under the procurement provisions; or

(B) Issues relating to the selection of a consulting engineer, provided that a protest may be filed only with respect to the mandatory procedural requirements of Section 22a-439-4 (g); or

(C) Issues primarily determined by local law or ordinance and as to which the Commissioner, upon review, determines that there is no contravening state requirement and that the municipality's action has a rational basis; or

(D) Provisions of State regulations applicable to direct State contracts unless such provisions are explicitly referred to or incorporated in these regulations; or

(E) Basic project design determinations; or

(F) Award of subcontracts or issuance of purchase orders under formally advertised, competitively bid, lump sum construction contracts. However, protest may be made to alleged violations of the following:

(i) Specification requirements of Section 22a-439-4 (f) (12); or

(ii) Provisions applicable to the procurement procedures, negotiation or award of subcontracts or issuance of purchase orders under Section 22a-439-4 (j).

(n) **Grant Conditions.**

Grants for pollution abatement facilities shall be subject to the following conditions:

(1) Municipality Responsibilities.

(A) Review or approval of engineering reports, plans and specifications or other documents by the Commissioner is for administrative purposes only and does not relieve the municipality of its responsibility to properly plan, design, build and effectively operate and maintain the pollution abatement facilities described in the grant agreement as required under law, regulations, permits, and good management practices. The Commissioner is not responsible for increased building costs resulting

from defects in the plans, design drawings and specifications or other subagreement documents.

(B) By its acceptance of the grant, the municipality agrees to complete the pollution abatement facilities in accordance with the engineering report, plans and specifications and related grant documents approved by the Commissioner and to maintain and operate the pollution abatement facilities to meet the enforceable requirements of the permit issued pursuant to Section 22a-430 of the Connecticut General Statutes for the design life of the pollution abatement facilities. The Commissioner may seek specific enforcement or recovery of funds from the municipality, or take other appropriate action if he determines that the municipality has failed to make good faith efforts to meet its obligations under the grant.

(C) The municipality agrees to pay the non-State costs of the pollution abatement facilities construction associated with the project and commits itself to complete the construction of the operable pollution abatement facilities, and the complete pollution abatement facilities of which the project is a part.

(2) Nondiscrimination.

Contracts involving construction work of $5,000 or more are subject to nondiscrimination requirements of the Governor's Executive Order No. Three and to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. Three.

(3) State Wage Rates.

Contracts involving construction work are subject to the appropriate State wage rates issued by the State Labor Commissioner.

(4) Access.

The municipality must insure that the Commissioner and his duly authorized agents will have access to the project work whenever it is in preparation or progress. The municipality must provide proper facilities for access and inspection. The municipality must allow any authorized agent of the State to have access to any books, documents, plans, reports, papers, and other records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, copies and transcriptions. The municipality must insure that a party to a subagreement will provide access to the project work, sites, documents, and records.

(5) Project Changes.

(A) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the grant agreement do not require the execution of a formal grant amendment before the municipality's implementation of the change. However, if such changes increase the costs of the project, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment.

(B) The municipality must receive from the Commissioner a formal grant amendment before implementing changes which:

(i) Alter the project performance standards.

(ii) Alter the type of treatment facilities provided by the project.

(iii) Delay or accelerate the project schedule.

(iv) Substantially alter the engineering report, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

(6) Operation and Maintenance.

(A) The municipality must make provisions satisfactory to the Commissioner for assuring economical and effective operation and maintenance of the pollution abatement facilities in accordance with a plan of operation approved by the Commissioner.

(B) The Commissioner shall not pay more than 50 percent of the State share of any project unless the municipality has an approved final plan of operation, and shall not pay more than 90 percent of the State share of any project unless the municipality has an approved operation and maintenance manual.

(7) Adoption of Sewer Use Ordinance and User Charge System.

The municipality shall adopt the sewer use ordinance and implement the user charge system developed under Section 22a-439-3 (e) and (f) and approved by the Commissioner before the pollution abatement facilities are placed in operation. Further, the municipality shall implement the user charge system and sewer use ordinance for the useful life of the pollution abatement facilities.

(8) Value Engineering.

The municipality must comply with the applicable requirements of Section 22a-439-3 (d) for value engineering.

(9) Project Initiation and Completion.

(A) The municipality shall expeditiously initiate and complete the project in accordance with the project schedule contained in the grant agreement. Failure to promptly initiate and complete a project may result in annulment or termination of the grant.

(B) The municipality shall initiate procurement action for building the project promptly after award of a construction grant. The Commissioner may annul or terminate the grant if the municipality has not awarded the subagreements and issued a notice to proceed, where one is required, for building all significant elements of the project within twelve (12) months of the construction grant award. Failure to promptly award all subagreement(s) for building the project will result in a limitation on allowable costs.

(10) Municipality Responsibility for Project Performance.

(A) The municipality shall select the engineer or engineering firm principally responsible for either supervising construction or providing architectural and engineering services during construction as the prime engineer to provide the following services during the first year following the initiation of operation:

(i) Direct the operation of the project and revise the operation and maintenance manual for the project as necessary to accommodate actual operation experience.

(ii) Train or provide for training of operating personnel including the preparation of curricula and training material for operating personnel.

(iii) Advise the municipality whether the project is capable of meeting the project performance standards.

(B) On the date one year after the initiation of operation of the project the municipality shall certify to the Commissioner whether the project is capable of meeting the project performance standards. If the project does not meet the project performance standards, the municipality shall submit the following:

(i) A corrective action report which includes an analysis of the cause of the project's inability to meet the performance standards including infiltration/inflow reduction, and estimates of the nature, scope and cost of the corrective action necessary to bring the project into compliance. Such corrective action report shall be prepared at other than State expense.

(ii) The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance.

(iii) The scheduled date for certifying to the Commissioner that the project is capable of meeting the project performance standards.

(C) Corrective action necessary to bring a project into compliance with the project performance standards shall be undertaken by the municipality at other than State expense.

(D) Nothing in this section shall be construed to prohibit a municipality from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work.

(11) Final Inspection.

The municipality shall notify the Commissioner of the completion of project construction. The Commissioner shall cause final inspection to be made within 60 days of the receipt of the notice. When final inspection is completed and the Commissioner determines that the pollution abatement facilities have been satisfactorily constructed in accordance with the grant agreement, the municipality may make a request for final payment.

(o) **Grant Amendments.**

(1) Grant agreements may be amended for project changes in accordance with this section. No grant agreement may be amended to increase the amount of a grant unless the grant funds are available for obligation. A formal grant amendment shall be effected only by a written amendment to the grant agreement.

(2) For grants awarded under these regulations, an amendment to increase the grant amount may be made for:

(A) Change orders, claims and arbitration settlements.

(B) Revised bid documents.

(C) Project changes required by the Commissioner.

(D) Increased costs on architectural/engineering agreements.

(p) **Enforcement.**

If the Commissioner determines that the municipality has failed to comply with any provision of these regulations, he may impose any of the following:

(1) The grant may be terminated or annulled under Section 22a-439-4 (s) (3) and (4).

(2) Project costs directly related to the noncompliance may be disallowed.

(3) Payment otherwise due to the municipality of up to 10 percent may be withheld.

(4) Project work may be suspended.

(5) A noncomplying municipality may be found nonresponsible or ineligible for future State assistance.

(6) An injunction may be entered or other equitable relief afforded by a court or appropriate jurisdiction.

(7) Such other administrative or judicial action may be instituted if it is legally available and appropriate.

(q) **Grant Payments.**

The municipality shall be paid the State share of allowable project costs incurred within the scope of an approved project and which are currently due and payable from the municipality (i.e. not including withheld or deferred amounts), up to the grant amount set forth in the grant agreement and any amendments thereto. Payments for engineering services shall be made in accordance with Section 22a-439-4 (d) and payments for construction contracts shall be made in accordance with Section 22a-439-4 (k) and (*l*). All allowable costs incurred before initiation of construction of the project must be claimed in the application for grant assistance for that project before the award of the assistance or no subsequent payment will be made for the costs.

(1) Initial request for payment. Upon award of grant assistance, the municipality may request payment for the unpaid State share of allowable project costs incurred before grant award. Payment for such costs shall be made in accordance with the negotiated payment schedule included in the grant agreement.

(2) Interim requests for payment. The municipality may submit requests for payments for allowable costs in accordance with the negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, the Commissioner shall cause to be disbursed from obligated funds such amounts as are necessary so that the total amount of State payments to the municipality for the project is equal to the State share of the allowable project costs incurred to date as certified by the municipality in its most recent request for payment. Generally, payments will be made within 20 days after receipt of a request for payment.

(3) Adjustment. At any time before final payment under the grant, the Commissioner may cause any request(s) for payment to be reviewed or audited and make appropriate adjustment.

(4) Refunds, rebates, credits, etc. The State share of any refunds, rebates, credits or other amounts (including any interest) that accrue to or are received by the municipality for the project, and that are properly allocable to costs for which the municipality has been paid under a grant, must be credited to the current State allotment. Reasonable expenses incurred by the municipality for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Commissioner.

(5) Final payment. After the completion of final inspection, approval of the request for payment which the municipality designates as the ''final payment request,'' and the municipality is deemed in compliance with all applicable requirements of the grant agreement, the Commissioner shall pay to the municipality any balance of the share of allowable project costs which has not already been paid. The municipality must submit the final payment request within six (6) months after final inspection.

(6) Assignment and release. By its acceptance of final payment, the municipality agrees to assign to the State the share of refunds, rebates, or credits or other amounts, including any interest, properly allocable to costs for which the municipality has been paid by the State under the grant. The municipality thereby also releases and discharges the State, its officers, agents and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Commissioner and the municipality.

(r) **Administrative Grant Changes.**

(1) Transfer of grants; Change of name agreements.

Transfer of grant and change of name agreements require the prior written approval of the Commissioner. The municipality may not approve any transfer of a grant without the concurrence of the Commissioner. The Commissioner shall prepare the necessary grant transfer documents upon receipt of appropriate information and documents submitted by the municipality.

(2) Suspension of grants (stop work orders).

Work on a project or on a portion or phase of a project for which a grant has been awarded may be ordered stopped by the Commissioner.

(A) Use of stop-work orders. Work stoppage may be required for good cause such as default by the municipality, failure to comply with the terms and conditions of the grant, realignment of programs, lack of adequate funding, or advancements in the state of the art. Inasmuch as stop-work orders may result in increased costs

to the State by reason of standby costs, such orders will be issued only after a review by the Commissioner. Generally, use of a stop-work order will be limited to those situations where it is advisable to suspend work on the project or a portion or phase of the project for important program or agency considerations and a supplemental agreement providing for such suspension is not feasible. Although a stop-work order may be used pending a decision to terminate by mutual agreement or for other cause, it will not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

(B) Contents of stop-work orders should be discussed with the municipality and should be appropriately modified in light of such discussions. Stop-work orders should include a clear description of the work to be suspended, instructions to the issuance of further orders by the municipality for materials or services guidance as to action to be taken on subagreements, and other suggestions to the municipality for minimizing costs.

(C) Issuance of stop-work order. After appropriate review of the proposed action has occurred, the Commissioner may, by written order to the municipality, require the grantee to stop all or any part of the project work for a period of not more than forty-five (45) days after the order is delivered to the municipality, and for any further period to which the parties may agree. The Commissioner shall prepare the necessary documents for the stop-work order. Any such order shall be specifically identified as a stop-work order issued pursuant to this section.

(D) Effect of stop-work order.

(i) Upon receipt of a stop-work order, the municipality shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period which the parties shall have agreed, the State shall either cancel the stop-work order, in full or in part, terminate the work covered by such order as provided in Section 22a-439-4 (s) (3), or authorize resumption of work.

(ii) If a stop-work order is canceled or the period of the order or any extension thereof expires, the municipality shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant instrument shall be amended accordingly if the stop-work order results in an increase in the time required for, or an increase in the municipality's cost properly allocable to, the performance of any part of the project and the municipality asserts a written claim for such adjustment within sixty (60) days after the end of the period of work stoppage.

(iii) If a stop-work order is not canceled and the grant-related project work covered by such order is within the scope of a subsequently-issued termination order, the reasonable cost resulting from the stop-work order shall be allowed in arriving at the termination settlement.

(iv) Costs incurred by the municipality or its contractors, subcontractors, or representatives, after a stop-work order is delivered, or within any extension of the stop-work period to which the parties shall have agreed, with respect to the project work suspended by such order or agreement which are not authorized by this section or specifically authorized in writing by the Commissioner, shall not be allowable costs.

(3) Termination of Grants

A grant may be terminated in whole or in part by the Commissioner in circumstances where good cause can be demonstrated.

(A) Termination agreement. The parties may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with these regulations. The agreement shall establish the effective date of termination of the project and grant, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party. The Commissioner will prepare the necessary grant termination documents.

(B) Project termination by municipality. A municipality may not unilaterally terminate the project work for which a grant has been awarded, except for good cause. The municipality must promptly give written notice to the Commissioner of any complete or partial termination of the project work by the municipality. If the Commissioner determines that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, he may enter into a termination agreement or unilaterally terminate the grant, effective with the date of cessation of the project work by the municipality. If the Commissioner determines that a municipality has ceased work on the project without good cause, he may unilaterally terminate or annul the grant.

(C) Grant termination by Commissioner.

(i) Notice of intent to terminate. The Commissioner shall give not less than ten (10) days written notice to the municipality of intent to terminate a grant in whole or in part.

(ii) Termination action. The municipality must be afforded an opportunity for consultation prior to any termination. After the Commissioner has been informed of any expressed views of the municipality and concurs in the proposed termination, the Commissioner may, in writing, terminate the grant in whole or in part.

(iii) Basis for termination. A grant may be terminated by the Commissioner for good cause subject to negotiation and payment of appropriate termination settlement costs.

(D) Effect of termination. Upon termination, the municipality must refund or credit to the State that portion of the grant funds paid or owed to the municipality and allocable to the terminated project work, except such portion thereof as may be required to meet commitments which had become firm prior to the effective date of termination and are otherwise allowable. The municipality shall not make any new commitment without State approval. The municipality shall reduce the amount of outstanding commitments insofar as possible and report to the Commissioner the uncommitted balance of funds awarded under the grant.

(4) Annulment of Grant.

The Commissioner may annul the grant if he determines that there has been no substantial performance of the project work without good cause, there is convincing evidence the grant was obtained by fraud, or there is convincing evidence of gross abuse or corrupt practices in the administration of the project. In addition to such remedies as may be available to the State under State, or local law, all grant funds previously paid to the municipality shall be returned or credited to the State and no further payments shall be made to the municipality.

(5) Deviations.

The Commissioner is authorized to approve deviations from requirements of these regulations when he determines that such deviations are essential to effect necessary grant actions or where special circumstances make such deviations in the best interest of the State.

(A) Request for deviation. A request for a deviation shall be submitted in writing to the Commissioner as far in advance as the exigencies of the situation will permit. Each request for a deviation shall contain as a minimum:

(i) The name of the municipality, the grant identification number, and the dollar value, if appropriate.

(ii) Identification of the section of these regulations from which a deviation is sought.

(iii) An adequate description of the deviation and the circumstances in which it will be used, including all appropriate justification for the deviation request.

(iv) A statement as to whether the same or a similar deviation has been required previously and, if so, circumstances of the previous request.

(B) Approval of deviation. Deviations may be approved only by the Commissioner. A copy of each such written approval shall be retained in the official State grant file.

(Effective August 22, 1985)